A

TREATISE

ON

HERESY,

AS COGNIZABLE BY THE

SPIRITUAL COURTS.

AND

An Examination of the Statute 9th and 10th of William IIId. c. 32,

ENTITLED,

" An Act for the more effectual ſuppreſſing of Blaſ-
" phemy and Profaneneſs, in denying by Writing,
" Printing, Teaching, or Adviſed Speaking, the
" Divine Original of the Scriptures, or the Doc-
" trine of the Holy Trinity."

BY A BARRISTER AT LAW.

Atqui nos legem bonam a malâ, nullâ aliâ niſi Naturæ Normâ, dividere poſſumus.

CICERO DE LEGIBUS.

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BRITANNICVM

ADVERTISEMENT.

THIS work was in the preſs before I was informed of the deſign of the Unitarian Diſſenters to apply to Parliament for the repeal of the 9th and 10th of William IIId. c. 32. But although they have thus in part anticipated the meaſure which I have adviſed them to adopt, yet the preſent publication is not the leſs neceſſary; for if there be any weight in the objections which I have urged againſt the ſtatute in queſtion, they ſerve to ſhew the reaſonableneſs of the intended petition.

March 5th, 1792.

The AUTHOR.

PREFACE.

THE freedom of the Britiſh Government is the artful theme of wary Politicians, and the fond topic of the undiſtinguiſhing Vulgar. The former expatiate upon its excellencies with a view to conceal its defects, and the latter fall into the ſnare which is laid for them.

The idea of three different eſtates acting independently on each other, and operating as mutual checks, inſtantly commands our applauſe as an ingenious arrangement: but does not this building, in which on a ſuperficial glance appear ſuch regularity and order, preſent on a more cloſe and minute inſpection the moſt ſtriking marks of diſproportion? If the people have no ſhare in the formation of

the laws, by which they are governed; if their repreſentation is but an idle name, an empty mockery; if nothing is wanting to carry any meaſure, but the hearty approbation of the Miniſter, and every movement of the political machine is obedient to his ſole direction; where is this nice balance, this equipoiſe of three diſtinct powers? where is the boaſted freedom of our government? Might it not with propriety be ſaid, that whilſt ſome governments have the form as well as the ſubſtance of deſpotiſm, the Britiſh has the ſubſtance without the form?

As with our government, ſo is it with our laws. The perfection of the code is deſignedly celebrated in lofty terms, that the neceſſity of reform in many parts may not become the object of general notice: the multitude, averſe to the fatigue of thinking, is deluded, and blindly copies the language of indiſcriminate praiſe—But "*ſi omnes Athenienſes delecta-*
"*rentur tyrannicis legibus, num idcirco hæ*
"*leges juſtæ haberentur? eſt unum jus, quo*
"*devincta*

" *devincta hominum ſocietas, et quod lex*
" *conſtituit una; quæ lex eſt recta ratio im-*
" *perandi et prohibendi.*"[a] Let us try the ſyſtem of our laws by this teſt; and although we may ſee much to admire, we ſhall alſo perceive that the valuable metal lies intermixed with no inconſiderable portion of droſs. The truth of this remark will, I believe, appear in the following pages.

With reſpect to the occaſion which turned my thoughts to the ſubject of this treatiſe, I have but few words to offer. The general diſcuſſion of an important queſtion naturally draws attention to kindred topics. Hence the warm controverſy concerning the Sacramental Teſt ſuggeſted to me the deſign of looking into all the laws which relate to Diſſenters. In the purſuit of this undertaking I found the matter grow ſo much upon my hands, that, to avoid prolixity, I made an alteration in my original plan, and limited my enquiry to a particular ſubject.

[a] Cicero de Legibus; Glaſgow edit. 12mo, vol. xiv. p. 27.

Hereſy in its greateſt extent uſually comprehended Apoſtacy from Chriſtianity, witchcraft, and formal hereſy. The two former offences, marking an unbelief in what was deemed the true faith, were therefore conſidered as branches of hereſy.[b] This publication treats only of formal hereſy, or hereſy in its characteriſtic ſenſe.

Sir Matthew Hale, in his *Hiſtoria Placitorum Coronæ*, has traced formal hereſy from the earlieſt ages to his own time, and the editor of his work has in a note ſubjoined the alterations which have been made ſince that period. The law, as it now ſtands, is alſo ſtated in Hawkins's Pleas of the Crown, and other books of legal information: but I know no writer, who has examined the fundamental principles of the Eccleſiaſtical juriſdiction over hereſy, or offered any reaſons for taking it away. This was the ſole object which I *firſt* propoſed to myſelf.

Cognizance of hereſy can now only be taken in the Spiritual Courts, unleſs we ex-

[b] 3 Inſtit. p. 44.

cept

cept the jurisdiction erected by the statute of the 9th and 10th of William IIId, c. 32, which prohibits the denial of the doctrine of the Trinity. To treat this subject fully, I judged it necessary to add my thoughts upon the propriety of repealing that statute; and being aware that recourse would be had to the hackneyed argument, that the power of the Spiritual Courts over heresy is now dormant, and the statute of King William remains unexecuted, I have endeavoured to give a full answer to this objection.

This composition was first drawn up in the form of an address; but I afterwards gave it the present shape, from an idea that a division into chapters and sections would render the arrangement more obvious.

To a legal disquisition an ornamental style would not have been so well adapted. Perspicuity and energy have been my only aim; but with what success the public must determine.

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PART II.

OF FORMAL HERESY BY THE STATUTE LAW.

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§. 1. In

§. 1. In what the offence conſiſts—who are capable of committing it—what is the puniſhment.

§. 2. The propriety of repealing it.

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The advantage reſulting even from an unſucceſsful application to Parliament for aboliſhing the ſpiritual juriſdiction over hereſy, and repealing the ſtatute 9th and 10th William III. c. 32.—The hope that this treatiſe may prove uſeful, even though it ſhould fail in producing ſuch an application:—a wiſh to reſtore the rights of the mind, and a method ſuggeſted for the accompliſhment of ſo deſirable an event.



PART I.

OF FORMAL HERESY BY THE COMMON LAW.

CHAP. I.

The True Legal Definition of Formal Hereſy.

GROSTEAD thus deſcribes Formal Hereſy:[c] "*Eſt ſententia humanô ſenſû "electa, palam docta, et pertinacitèr defenſa.*"[d] Sir Matthew Hale thinks this the moſt *reaſonable* definition, and he is followed by Sir William Blackſtone.

Not so. Hale only states it as more reasonable than the description by the papal canonists. Blackstone follows it. Grosteads definition suits our law.

Theſe authors appear to coincide in ſentiment with St. Auſtin, who expreſſes himſelf thus; "Errare poſſum, *hæreticus* eſſe nolo;"

3 84.

[c] Hale's Hiſtory of the Pleas of the Crown, vol. i. p. 390.

[d] It is impoſſible to give a clear literal tranſlation of this ſentence.—Let us however attempt to preſerve the idea. Hereſy is 'a paſſage of holy writ taken in a ſenſe merely human, or, in 'other words, in a ſenſe not warranted by the word of God; 'openly taught and obſtinately defended.'

"I may

" I may fall into an error, but I would not " be an heretic." But Mr. Hawkins, in his Pleas of the Crown, ſtates, that " Hereſy " amongſt Proteſtants is a falſe opinion re- " pugnant to ſome doctrine clearly revealed " in ſcripture, and either abſolutely eſſential " to the Chriſtian faith, or at leaſt of moſt " high importance to it."[e] It ſhould ſeem by omitting to include the obſtinacy of the defence, that Mr. Hawkins did not agree with Sir M. Hale, and Sir W. Blackſtone, in thinking it a neceſſary part of the crime of hereſy; but conſidered the offence to conſiſt *merely in holding* the erroneous opinion. I ſhall take the liberty of offering my reaſons for preferring the definition of Mr. Hawkins.

Obſtinacy in maintaining a ſentiment is characterized by a refuſal to liſten to objections, or to give them due conſideration. Whoever therefore is open to conviction, and maturely weighs the oppoſite arguments, cannot, according to Sir M. Hale, and Sir W.

[e] Hawkins's Pleas of the Crown, folio edition, p. 3.

Blackſtone,

Blackſtone, be denominated in law a heretic, even though he ſhould not renounce the error, either ſuppoſed or real, with which he is charged. If this idea be juſt, ſcarcely any perſon could ever have been fairly convicted of this offence. The lover of truth and virtue will always hear with patience, and inveſtigate without bias: the diſhoneſt mind will either aſſume the appearance of candor and attention, or make no ſcruple, "*jurare in verba magiſtri.*"—How therefore ſhall we account for the great number, who for this crime have periſhed at the ſtake, unleſs indeed we ſuppoſe that the judge, aſtoniſhed to perceive that the arguments, which appeared to him ſo powerful, produced not the ſame impreſſion upon the accuſed, generally regarded a denial to abjure as in itſelf ſufficient evidence of obſtinacy?

But a ſhort ſurvey of the antient proceedings for formal hereſy at the common law affords, in my judgment, a deciſive argument againſt the notion of theſe eminent lawyers.

The

The common law of England is in this inſtance "much according to the papal decretals and conſtitutions,"[f] which formerly prevailed in almoſt all the ſtates where the Romiſh religion was acknowledged.

Heretics were diſtinguiſhed into three claſſes; the Hæreticus *ſimplex*, the Hæreticus *contumax*, and the Hæreticus *relapſus*.

If A, being convened for holding a certain opinion, which the ordinary ſhould declare to be heretical, was convicted and abjured, the ſentence was remitted; A was called hæreticus *ſimplex*. The abjuration was either general or ſpecial, and was alſo required of thoſe who were *graviter ſuſpecti* of hereſy: if ſuch would not comply, they were ſentenced as convict.

If A, whom we have lately termed *hæreticus ſimplex*, after conviction refuſed to abjure, then A became *hæreticus contumax*, and was ſentenced: or if a perſon being accuſed of hereſy would not appear before the ordinary,

[f] Hale's H. C. P. vol. i. p. 390.

but

but was excommunicated and remained ſo for one year, then he was condemned "*velut hæreticus*," as an heretic. Both theſe upon repenting and abjuring, even after ſentence, were ſpared.

If A, after having abjured, fell again into hereſy, and was convicted and ſentenced, A was *verè relapſus*; and it was not in the power of the ordinary to ſhew mercy. But if a perſon, being convened under ſuſpicion of hereſy, abjured, and afterwards kept company with known heretics, he was *ſuppoſed* to have relapſed, that is, in the language of the law, he was "*fictè relapſus:*" the ordinary might however have detained him in priſon, without actually delivering him over to the ſecular arm for execution.

I have taken this account from Sir Matth. Hale,[g] who gives it on the authority of Lindwood; and yet, from this account itſelf, I ſhould conceive it may be ſhewn, that Sir Matthew has not choſen a correct definition of hereſy.

[g] Hale's H. P. C. vol. i. pages 385, 386, 387.

If

If the obſtinacy of the defence conſtituted or even made a part of the crime, what reaſon could there be for ſuch a diſtinction amongſt heretics? for every heretic muſt from the very nature of the offence be *contumax*, or obſtinate. Or why ſhould an unqualified refuſal to abjure, denominate a perſon an *hæreticus contumax?* According to this principle, there ſhould have been a proviſo, if ſuch refuſal appear to ariſe from perverſeneſs, leſt the humble and ingenuous, who *could not* be convinced, ſhould be expoſed to the penalty of the law.

It may likewiſe be obſerved that, according to this principle, the form of abjuration would certainly have been required *previous to conviction:* but it has been ſeen that the contumacy contemplated by the law, was not only unqualified, but *followed* the conviction. It evidently therefore was not conſidered as any part of the guilt. There is indeed one, and one only caſe, in which the contumacy appeared before conviction: but this,

this, ſo far from overthrowing my poſition, makes entirely againſt the ideas of theſe learned gentlemen. If a perſon "*graviter ſuſpectus*," groſly ſuſpected of hereſy, was called upon to abjure, and refuſed, then he was convicted: but it is moſt clear that in this caſe he was not called upon to abjure with a view to prove contumacy as neceſſary to conviction, but to prove that he held the error imputed to him. Conviction ever preceded a requiſition to abjure where proof could be had; but when there was only a ſtrong ſuſpicion, or, in other words, when ſufficient teſtimony was wanting, then the accuſed himſelf was put to the teſt, that it might be ſeen whether he entertained any heretical ſentiment or not. This is the obvious way of accounting for the diſtinction. The contumacy was regarded as an *evidence* of guilt, and therefore could not be a *part* of it.

Thus it appears that the different claſſes of heretics, and the proceedings in the trial, are not at all to be explained upon the principle

ciple adopted by theſe gentlemen; but if the crime be conſidered as conſiſting merely in the error, there is a key which unlocks the whole meaning. The arrangement of the parts follows naturally. If A, being convened for the guilt of holding an erroneous opinion was convicted, and immediately abjured, this was conſtrued penitence, and he was ſaved from the penal conſequences of his firſt offence. If A refuſed to abjure, that is, to give any evidence of ſorrow for his crime, the ſentence founded on the conviction was pronounced. If he afterwards repented of his perſeverance, and was willing to abjure, mercy was ſtill open to him; but its door was for ever ſhut, if he was again convicted and ſentenced; becauſe there could be no farther belief in the ſincerity of his repentance, or confidence in his ſteadineſs to the true faith. It is obvious, by this ſtatement, that although the heretic paid the penalty of the law after perſiſting in his refuſal to abjure, yet he ſuffered not for his contumacy,

for

for that ſucceeded his conviction. The abjuration proffered was of the nature of a conditional pardon, which being rejected, the law took its courſe. To contend that the capital puniſhment in this caſe was for the contumacy in refuſing to abjure after conviction, is like contending that a priſoner under ſentence of death for ſome capital offence, and having a conditional offer of pardon which he rejects, is executed not for the capital offence, but for his obſtinacy in not accepting the terms of royal mercy. If the reaſoning I have uſed be juſt, it cannot be diſputed that error, and error only, was the baſis of the juriſdiction, and conſequently that the obſtinacy of the defence ought to have no place in the definition.

I have been careful to eſtabliſh this point, that the propriety of an inference, which I ſhall hereafter make, may not be called in queſtion.

CHAP. II.

The Courts in which Formal Hereſy is cognizable by the Common Law; the ground of their Juriſdiction, and the diſcretionary Powers of the Judge who preſides in them.

BY the Common Law, which, as I have already obſerved, is in this inſtance conformable to the Canon Law, formal hereſy muſt be proſecuted in the Spiritual Courts.

In former times it was a general article of belief, that ſalvation was the excluſive property of thoſe who held the reputed orthodox faith. All other tenets, even the moſt innocent as to their conſequences upon peace and order in this world, were deemed to be inſeparably connected with endleſs torments in the next. To recover the ſoul from its loſt ſtate, this penal juriſdiction was erected over religious opinions; and it was evidently committed to the eccleſiaſtic, becauſe the care of the ſpiritual welfare of mankind was his peculiar province. The civil magiſtrate was

ſaid

ſaid to poſſeſs no right of interfering with any doctrines, but ſuch as had an obvious tendency to promote immorality, and thus introduce vice and diſorder into the *ſtate*.

This, if we may judge from ſome particulars in the antient proceedings, was the foundation of the eccleſiaſtical juriſdiction over hereſy. The convict, until he was pronounced *verè relapſus*, might ſave himſelf by abjuration. This never would have been the caſe, if hereſy had been capitally puniſhed as a crime highly prejudicial to ſociety; but as in all other inſtances, where the life of the criminal was adjudged a forfeit to the law, execution would unavoidably have followed the ſentence, unleſs his Majeſty, from circumſtances either of doubt or alleviation, had thought proper to interpoſe his royal pardon. But if we conſider this court as inſtituted for the purpoſe of compelling a man to abandon his errors from a view to his eternal happineſs, it is perfectly conſiſtent with this end that recantation, whilſt there was a proſpect

of a continuance in the true faith, ſhould ſet aſide the penalty. Further, upon judgment of death, or ſuch circumſtances as are equivalent to judgment of death, as judgment of outlawry on a capital crime, a man, ſays Sir Wm. Blackſtone,[h] is ſaid to be attainted, and forfeits his real and perſonal eſtates. The ſame author likewiſe obſerves, that one of the grounds on which the law in capital caſes founds confiſcation of property is this; the right of transferring property is a ſocial advantage, which a man ſhall therefore loſe, when his conduct as a member of the community calls for his deſtruction.[i] If therefore the law, when it doomed the heretic to death, had contemplated him in his ſocial capacity, what reaſon can be given, why confiſcation of property, agreeably to the general principle in capital caſes, was not annexed to the writ *de hæretico comburendo?* But if we conſider the whole proceſs againſt the heretic as directed *pro*

[h] Commentaries, vol. iv. p. 374.

[i] Ibid. p. 375.

ſalute

ſalute animæ, nothing is more eaſily explained. He is proſecuted for the ſake of his ſpiritual welfare as an *individual*, and therefore none of his *ſocial* rights are taken away. "Neither lands nor goods," ſays Lord Coke, "before the making of the ſtatute 2 Henry "Vth, c. 7, (which was afterwards repealed "by the act of 1 Elizabeth, c. 1,) were "forfeited by the conviction of hereſy, be-"cauſe the proceeding therein is merely "ſpiritual, *pro ſalute animæ*, and in a court "that is no court of record."[k]

We have now ſeen the principles upon which our old conſtitution aſſigned the cognizance of hereſy to the eccleſiaſtical power; and ſo tender was the civil magiſtrate of invading it, that he never preſumed to dictate what opinions were heretical, or, in other words, pernicious to the ſafety of the ſoul. This was left entirely to the diſcretion of the Dioceſan: at the trial and not before, he decided whether the tenet, with which any per-

[k] 3 Inſtitute, 43.

ſon

ſon was charged, was heretical or not. This unlimited power of determining what ſhould be deemed hereſy was groſly abuſed by the clergy, who convened perſons for opinions which had not the leaſt connexion with the doctrines of chriſtianity. In the reign of Edward IV. John Keyſer, having been excommunicated by Thomas Archbiſhop of Canterbury, ſaid, " that notwithſtanding the " Archbiſhop or his Commiſſary had excom- " municated him, yet before God he was not " excommunicated, for his corn yielded as well " as his neighbours." The Archbiſhop for this ſpeech committed him to gaol under pretext of the ſtatute 2 Henry IV. and aſſigned this reaſon, " *dictum Johannem non* " *immeritò habemus de hæreſi ſuſpectum*," for we not undeſervedly ſuſpect the ſaid John of hereſy.[1] In the reign of Henry VII. Hilary Warner ſaid, " that he was not bound to pay " tithes to the curate of the pariſh, where he " lived." For theſe words he was arreſted, and

[1] 3 Inſtitute, p. 42.

it

it was contended by the Biſhop of London, in juſtification of the impriſonment, that Warner had been guilty of hereſy. Lord Coke might well remark upon theſe caſes that the Biſhops " took many things to be hereſy " which in troth had no ſhadow of it;"[m] but ſtill it is not wonderful that the declaration of Warner ſhould be reputed heterodoxy. Abuſes of this kind occaſioned the legiſlature at various times to interfere, and at length 1 Elizabeth c. 1, was enacted, which abrogated all former ſtatutes, and made ſome new regulations. It enacts, that from that time nothing ſhall be adjudged hereſy, but ſuch as heretofore has been ſo determined, 1ſt, by the authority of the canonical ſcriptures; 2dly, or by the firſt four general councils, or any of them, or by any other general council, wherein the ſame was declared to be hereſy by the expreſs and plain words of the ſaid canonical ſcriptures; 3dly, or ſuch as ſhall hereafter be determined hereſy by Parliament,

[m] 3 Inſtitute, p. 42.

with

with the aſſent of the clergy in convocation. Suppoſe this rule to be binding upon the eccleſiaſtical judge, ſtill he would be left entirely to himſelf in deciding what was hereſy by the authority of the canonical ſcriptures: his own interpretation would be his only guide: but this rule is not binding upon the eccleſiaſtical judge; it is abſolutely at his diſcretion whether he will adopt theſe directions or not: for this ſtatute relates only to the High Commiſſion Court, ſince aboliſhed by the 16th Charles I. c. 11. That it is not at all obligatory upon the dioceſan is evident from the 12th report, p. 57, where it is ſaid, " and although this *proviſo extends only to the High Commiſſioners*, yet ſeeing in the High Commiſſion there be ſo many Biſhops and other divines and learned, it may ſerve for a good direction to others, eſpecially to the dioceſan, being the ſole judge in ſo weighty a cauſe." Does it not then appear, upon the authority of this great law luminary, that the dioceſan is not bound to obſerve the regulations of this

this ſtatute? Since the period, of which we are now ſpeaking, no reſtraints have been impoſed, ſo that the power of the ſpiritual court is ſtill extremely arbitrary. A man may now, by the common law of his country, be convened before the dioceſan, and tried for holding an opinion, which he could not before know to be heretical. The temporal courts could not interfere in ſuch a caſe, their juriſdiction for hereſy being only incidental. If for inſtance there be a *quare impedit* againſt a Biſhop, who had refuſed to inſtitute on account of hereſy, the particular ſpecies of it muſt be alledged in the plea, and the temporal courts may decide whether it be properly ſuch; but they have no *direct* cognizance in determining what is hereſy. If therefore A, having been convened before the dioceſan, and convicted of this crime, be diſſatisfied with the ſentence, he can ſeek redreſs only in an appeal to a higher ſpiritual court, and his dernier reſort is to the King himſelf, as head of the church. The crown became poſſeſſed of this power in the

the reign of Henry VIII. when the ſupremacy of the church was transferred from the Pope to the King. Infallibility was thus removed from the mitre to the ſceptre. But here it had no ſtationary reſidence. In the reign of Mary it returned to its ancient ſeat; but in that of Elizabeth it reſumed its abode within the circle of the regal diadem, and there remains to this day.[n]

CHAP. III.

The preſent mode of proceeding in thoſe Courts.

UPON an accuſation of hereſy the party muſt be convened before the Dioceſan, who then pronounces, without following any other guide than his own judgment, whether

[n] By 25 Henry VIII. c. 19, all appeals to the Court of Rome were taken away. By 26th Henry VIII. c. 1, the authority of the King, as head of the church, was confirmed; and by 37th Henry VIII. c. 17, it was recognized. By 1ſt and 2d Philip and Mary, c. 8. §. 22, the Pope's ſupremacy was re-eſtabliſhed: but by the 1ſt Eliz. c. 1, all foreign power was aboliſhed.

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the tenet is heretical. If it be determined in the affirmative, and the party be convicted, he is called upon to abjure. So likewiſe a party ſtrongly ſuſpected of hereſy may be convened, and, if he refuſe to abjure, convicted. Thus far the ancient and preſent proceedings agree; but let us ſee in what they differ. According to the old proceſs, he who was firm to his purpoſe of not retracting, might be delivered over by the Dioceſan to the ſecular arm "*ut comburatur*," that he might be burnt. This was done by virtue of the writ *de hæretico comburendo*, a writ which, according to Briton, is as antient as the common law.* To illuſtrate the ground of it let us attend to the following conſiderations.

A man's life is his ſtrongeſt temporal intereſt; it was not therefore permitted to the eccleſiaſtic to take it away *ad libitum*, but it was left to the civil power finally to determine whether the crime were deſerving of death. Hence the writ was not *of courſe*, but

* Briton, lib. i. c. 17.

independent

dependent on the King's pleaſure. The giſt of the proceſs being, as we have ſeen, the good of the ſoul, not any reparation to ſociety, the civil advantage of transferring property was not taken away; but ſince the *ſalus animæ* could no longer be promoted, and great damage, it was thought, might have accrued to the church from the growth of hereſy, it was deemed proper to cut off the offender from the face of the earth. This was the motive for iſſuing the writ, as far as we can collect from the terms in which it is couched. It ſtates that "*Eccleſiam ſanctam, ac jura et li-*"*bertates ejuſdem manutenere et defendere, et*"*hereſes et errores de regno noſtro Angliæ radicitùs*"*extirpare*;" that to defend the holy church, its rights and liberties, and to root out of our kingdom of England hereſies and errors, the offender ought to be committed to the flames, "*in hujus criminis deteſtationem, aliorumque*"*Chriſtianorum exemplum*," as a mark of deteſtation of the crime, and a terror to other Chriſtians.[p] Lord Coke defines hereſy to be

[p] See the form of this writ in F. N. B. p. 595.

a leproſy of the ſoul; and as he that is a leper, ſays he, ought to be removed from ſociety by the King's writ *de leproſo amovendo*, ſo a heretic ought to be deſtroyed by the writ *de hæretico comburendo*, leſt he ſhould infect and poiſon others,[q]

But it is needleſs to purſue this point farther, ſince by the 29th Charles II. the writ *de hæretico comburendo* was repealed.[r] It is now

[q] 3 Inſtitute, p. 43.

[r] The motives, by which the legiſlature was actuated in repealing this writ, are given in Kennet's life of Charles II. vol. 2, p. 361; and however queſtionable this hiſtorian's authority may be in other caſes, it may ſurely be depended upon in this. As a biſhop and favorer of the court, he would have been happy to have given the ruling powers every degree of credit conſiſtent with a regard to truth.—"Under the apprehenſion of popery, it was thought, ſays he, to be ſome wiſdom of prevention to make an act for taking away the writ *de hæretico comburendo*." Thus it was not to exempt others from the poſſibility of being burnt, but to preclude the riſque of being burnt themſelves, that the adminiſtration of thoſe times determined upon the abolition of this ſanguinary writ. Their conduct was the effect of fear, not of general and enlarged principles.

Of the proceedings in parliament on that occaſion, I have been able to find no circumſtantial account, except in Oldmixon's hiſtory of the Stuarts, p. 616.—"Walter Herbert, eſq; Secretary to Prince Rupert, a Member of the Houſe of Commons, moved in this or the laſt ſeſſion of Parliament for an act to repeal the ſtatute *de hæretico comburendo*. The Houſe immediately ordered ſuch a bill to be brought

puniſhable

puniſhable by eccleſiaſtical cenſures not extending to death.[s] If a clergyman be con-

in, and wondered, that it had not been done before. It paſſed *nem. con.* and Herbert had the thanks of the Houſe. But it met with oppoſition from the Biſhops in the Houſe of Lords, not one of them voting for it, except the very learned and reverend Dr. Barlow, Biſhop of Lincoln." This narrative is very particular, but I know not how to rely upon it, ſince Mr. Oldmixon is far from being reputed a faithful hiſtorian.—Beſides, I have ſearched the journals of the Houſe of Commons, and inſtead of finding that Mr. Herbert received the thanks of the Houſe, I cannot even diſcover that he was the mover of the repeal.—A learned friend kindly undertook to aſſiſt me in this inveſtigation, and I cannot do better than tranſcribe the words of his letter. "I have ſearched, ſays he, in vain for an account of the debate on taking away the writ *de hæretico comburendo*; but there is a material entry in the journals of the Lords, which ſhews that ſeveral biſhops were preſent when it paſſed, and that the Biſhop of Sarum made the report of the committee upon it. There is a memorandum at the end of one of the volumes of Chandler's debates, in which it is ſaid, that in a former year an unſucceſsful attempt was made to get the act repealed, and I have been tempted to think, that upon that *former occaſion* the circumſtance (if it *ever* happened) happened, of all the Biſhops oppoſing it—but no entry appears on the journals."

[s] See the 29th Charles II. c. 9. ſec. 2.—Since I finiſhed this treatiſe I have ſeen a very well-written pamphlet, entitled "High Church Politics," which has occaſioned me to examine with greater minuteneſs the above-mentioned ſtatute. This author's obſervation appears to me to be juſt, when he ſays, "It is not clear that eccleſiaſtical judges may not even now *doom* heretics to the flames, though the civil power will not execute the ſentence." High Church Politics, p. 65. Perhaps the term "*cannot* execute the ſentence," would have been more proper, ſince the writ *de hæretico comburendo* is abſolutely taken away.

victed

victed of it, deprivation, degradation, and excommunication, are his lot; but a layman is only liable to the latter, that is, he is only "a "man accurſed, devoted to the devil, ſeparated "from Chriſt and the communion of his "Church."[t] The *civil* conſequences attendant upon ſentence of excommunication conſiſt in a diſability to be a juryman or witneſs, to bring an action either real or perſonal for the ſake of recovering land or money due, or "to do any act that is required to be done by "a *probus et legalis homo*." This judgment may be annulled by retraction within forty days after the publication; but if no renunciation of the error be made within the given time, then upon a *ſignificavit* into Chancery, a writ *de excommunicato capiendo* is iſſued, by virtue of which the heretic is arreſted and thrown into priſon. Whenever he is diſpoſed to abjure, he may procure his liberation, and be reſtored to his former ſtate of citizenſhip.

Here again we perceive a difference. If

[t] Godolphin's rep. canon. 625, 626.

the

the heretic of former times was adjudged *verè relapſus*, it was no longer in his own power to avert his fate: the heretic of the preſent day is permitted at all times to reverſe his ſentence by abjuration.

I have endeavoured, in this and the preceding chapter, to ſhew the preſent ſtate of the common law reſpecting hereſy. I have been obliged to touch occaſionally upon the antient proceedings, but I have done it no farther than it appeared to me abſolutely neceſſary. To have ſpecified all the ſtatutes, which during a courſe of years were framed, but now no longer exiſt; to have offered a ſolution to doubts formerly entertained upon ſeveral queſtions, which in conſequence of ſubſequent laws can be no longer controverted; would have been a dry and uſeleſs diſquiſition. I had no other object than to clear the way for the following remarks. Premiſes ſhould be well eſtabliſhed, before concluſions are drawn.

CHAP.

CHAP. IV.

Remarks ſuggeſted by a view of the end and ſubject of the Spiritual Juriſdiction over Hereſy.

SECT. I.

That it is directed to an end, with which no human tribunal has any concern.

THE ſole object in the formation of civil ſociety muſt be the care of civil affairs. If laws are therefore directed to any other end, the end is unjuſtifiable. Hence a juriſdiction *pro ſalute animæ* is unwarrantable. It is well obſerved by a very ſenſible divine[u] of the church of England in the reign of George I. that if the crimes puniſhable by our tribunals could be ſtripped of their ill conſequences to ſociety, they would be no

[u] See a ſermon of Dr. Ibbot's on the nature and extent of the Office of the Civil Magiſtrate, a ſermon which deſerves to be attentively conſidered in times like theſe, when there is no ſafety for thoſe, whoſe religious principles are at variance with the doctrines of the eſtabliſhed church.

longer within the juriſdiction of human authority; for although moſt of them are alſo tranſgreſſions againſt the law of God, it is not for man to take cognizance of them on that ground.

Let me farther obſerve, that a penal juriſdiction, for an end, the attainment of which even in the ſmalleſt degree can never be aſcertained, is abſurd. To illuſtrate the juſtice of this remark. You puniſh certain offences injurious to ſociety, with a view to prevent them. If by theſe means you cannot entirely ſucceed, you know that, by enforcing the laws, the evil practice will become leſs frequent. But in a juriſdiction *pro ſalute animæ* you aim at what can never be known. It is not enough that a man's conduct be right, but his motives muſt be good; and how ſhall others penetrate the ſecret ſprings of his actions?

With reſpect to opinions, ſhould it be granted that a right belief was neceſſary to ſalvation, and that the court was fully acquainted with the truth, yet the profeſſion of

of it by another is vicious unleſs it be ſincere; and this knowledge is only open to his own conſcience, and the omnipreſent God.

To offer one argument more on this head. In the broad line of duty, there could be no diſagreement in opinion between the Spiritual Court and the individual; but there are occurrences, in which the proper rule of conduct is far from obvious. The court may preſcribe one thing, and the conſcience of the individual another. If there be a right in the tribunal to enforce obedience to its deciſion, then a man muſt act contrary to the dictates of his conſcience for the ſake of promoting his own ſalvation. Should the tribunal poſſeſs a juriſdiction with the ſame views over the opinions of mankind, (which is the caſe before us) there ariſes an objection equally unſurmountable. A right to compel belief cannot exiſt on any principle, becauſe it is abſolutely impracticable; a right to compel a profeſſion of ſentiments, without belief, *for the good of the ſoul*, is a right to

compel another to commit an act of hypocriſy, that he may not forfeit his hopes of eternal happineſs.

Let me here add a queſtion not impertinent to the ſubject. The eccleſiaſtical court has not only a cognizance, *pro ſalute animæ*, over religious tenets, but likewiſe over immoralities unconnected with injuries. How is it that the zeal of this court for promoting man's ſalvation, has ever been more ſtrongly diſplayed in extirpating error, rather than vice? It appears as if pride of underſtanding was more predominant in the breaſt of an eccleſiaſtic, than love of virtue.

SECT. II.

That it is exerciſed upon a ſubject, which falls not within the province of human authority.

HERESY has been defined "a falſe opi-"nion repugnant to ſome doctrine clearly "revealed in ſcripture, and either abſolutely "eſſential to the Chriſtian faith, or at leaſt "of

" of moſt high importance to it." Opinions then are the ſubject upon which this juriſdiction is exerciſed. That penal laws ſhould not have for their end the ſalvation of mankind has been already ſhewn, ſo that the eccleſiaſtic cannot thence derive any right to the powers which are annexed to this court; and if he has it not on that ground, he has it not at all; for if any perſon may take cognizance of opinions as far as they affect ſociety, it is the civil and not the eccleſiaſtical magiſtrate.

But to reaſon upon a more enlarged ſcale. Actions hurtful to ſociety are the only proper province of human authority. As the eſtabliſhment of this poſition is of great importance, and material to a future part of this treatiſe, I ſhall enter far into the field of diſcuſſion. I ſhall firſt try the point by general principles, and afterwards examine the objections, which may be urged againſt it.

That each man, as he came from the hands of his Creator, is equal to the reſt of mankind, and that according to his own will he may, or

may

may not live in ſociety, are poſitions, which will not, I believe, be diſputed. Now on what terms, it may be aſked, ought he to enter into ſociety with his fellow creatures, and inveſt others with authority to rule over him? Mr. Burke in a late publication has contended, that man on the formation of civil ſociety reſigns all his natural rights.* Let this be granted, and it was the greateſt weakneſs to quit his natural condition. Some of his rights, ſuch as the rights of the mind, he before enjoyed compleatly; but now he lives like a captive at the *entire* diſpoſal of his victor. He has no ſecurity for the poſſeſſion of a ſingle advantage, but the will of his rulers. But Mr. Burke might have conſidered, that it is out of the power of man to make a ſacrifice of *every individual* right. The right of thinking for himſelf, the right of form ng his own faith, *cannot* be ſurrendered, becauſe belief is, and ever muſt be, in-

* See the whole of his reaſoning from p. 86 to 92, in his Reflections on the Revolution in France.

dependent

dependent even on his own will. How then can any man give to another ſway over his conſcience? It is impoſſible. Mr. Burke might have conſidered farther, that ſuppoſe it to be in the power of man to ſurrender himſelf abſolutely to the direction of his rulers, ſtill he could not do it without acting traiterouſly to his God. Imagine his rulers to paſs a law commanding the performance of a thing *malum in ſe*; the abject ſlave has no choice; he is bound to implicit and univerſal obedience. Should not therefore a ſenſe of the duty, which each perſon owes to his God, teach him to reſerve to himſelf the liberty of reſiſting the commands of the civil magiſtrate, when they are evidently contradictory to the great precepts of morality.

Since then man is not capable of reſigning all his natural rights, nor, if capable, could make that abſolute ſurrender conſiſtently with the duty he owes to his Creator, nor wiſely with reſpect to his own advantage, the next queſtion will obviouſly be, what portion of his

his natural liberty ſhould he ſurrender? It is ſeen that he cannot delegate any authority over his thoughts; but ought he not to be reſtrained from declaring, or publiſhing, ſuch opinions as are dangerous to the well-being of ſociety? This right he can ſurrender. He can indeed, but he never ought. The free communication of ſentiment and opinion, where it operates not to the detriment of any individual, is one of the moſt precious rights of man. Society may protect his body, and be the inſtrument of promoting his advantage, but neither that protection, nor the greateſt ſocial advantage, can compenſate for the loſs of mental freedom. If the publication of opinions, the tendency of which is deemed pernicious, ought to be prohibited, who is to judge, what opinions ought to be included in that deſcription?—the legiſlature. Who is to judge of the means, which are adequate to the prevention of the dreaded miſchief?—the legiſlature. Thus the legiſlature may, whenever it pleaſes, forbid, on pain

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of death, the publication of ſentiments in no degree injurious to the character of any member of the community. Thus the ſtatute of Henry VIIIth, diſtinguiſhed by the name of the bloody ſtatute, may be juſtified.[x] What reaſonable man therefore would chooſe to truſt his rulers with any authority over his opinions?[y] Every power, but that of inflicting

[x] By 31ſt Henry VIII. c. 14, the following ſix articles were eſtabliſhed as the Orthodox faith. 1. That in the ſacrament of the altar, after conſecration, there remained no ſubſtance of bread and wine, but the ſubſtance of Chriſt. 2. That communion in both kinds was not neceſſary *ad ſalutem*. 3. That prieſts ought not to marry by the law of God. 4. That vows of chaſtity ought to be kept. 5. That private maſs was neceſſary to be continued. 6. That auricular confeſſion is neceſſary to be retained and uſed.—To preach, declare, or *hold an opinion* againſt the firſt was conſidered as hereſy, and puniſhed with death by burning, and forfeiture of lands to the King; to openly preach againſt the laſt five was felony without benefit of clergy; but to publiſh or declare an opinion againſt them was for the firſt offence forfeiture of goods, and the profits of lands during life, the loſs of eccleſiaſtical promotions, and impriſonment at the King's will; and for the ſecond, felony without benefit of clergy.

[y] The neceſſary reſult of ſuch an authority in government is this. One legiſlature will maintain as truth, what another has reprobated as error: one will think innocent, what another has deemed dangerous to ſociety: the ſame ſentiment, which one has defended by ſanctions, another will prohibit perhaps under pain of death. The opinions eſtabliſhed by Henry VIII. are now pronounced erroneous: if

flicting actual injury ſhould be retained in the individual, and protected by the government againſt all controul: thus would each citizen perform, not only without reſtraint, but in perfect ſecurity, the duties which he owes to his God, duties which ought not to be ſuperſeded by any obligations which he contracts with ſociety. He would, on the one hand, loſe no portion of his natural liberty, but the power of committing miſchief, and thus be no longer liable to the evils ariſing from the abſolute ſovereignty of each over his own actions: on the other, he would poſſeſs the protection of the ſocial union, without the painful thought, that the continuance of his liberty depended on the mercy of his governors:—In a word, he would part with nothing but the diſadvantages of the natural ſtate, and take in return the unalloyed benefits

if this be the caſe, then thoſe who ſuffered death in conſequence of the bloody ſtatute, were of the glorious army of martyrs in the cauſe of truth; but if the opinions of Henry be not erroneous, then our preſent parliament continues a falſe national faith, and permits the exiſtence of ſevere laws againſt thoſe who hold the genuine doctrines of chriſtianity.

of

of civil ſociety. It will perhaps be objected to the principles on which I have argued, that the people being free to alter their conſtitution as often as they think fit, great confuſion would ariſe through frequency of change; but this is an ill-grounded apprehenſion: a whole nation is a body too immenſe to be eaſily ſet in motion: nothing but general, continued, and intolerable oppreſſion can rouſe the public reſentment againſt a government. I am ever ſatisfied of the neceſſity of a revolution, if I but hear that it was begun by the people at large.

The propriety of the poſition intended to be proved, ſeems to be eſtabliſhed by the reaſoning which has been employed. Let us however inquire whether any objections may be urged, and what weight is due to each of them.

It may be ſaid perhaps,—" If the province " of the magiſtrate be confined to actions " hurtful to ſome member or members of the " community, then every one may declare or " publiſh

" publiſh what ſentiments he pleaſes, pro-
" vided that no injury be ſuſtained by any
" individual. And if every one has this liber-
" ty, then ſeditious principles may be diſſemi-
" nated with impunity." To this I reply—
Let ſuch principles be circulated, there never will be wanting thoſe who are ready to combat them. Should any body of men have formed a deſign to diſturb the tranquillity of the ſtate, a vigilant police ſoon diſcovers it. Where many bear a part, the purpoſe quickly becomes manifeſt, and a vigorous conduct on the part of the magiſtrate, the firſt moment that an act of ſedition is committed, effectually prevents commotion. And if it be time enough to take cognizance of *a body of men*, when their diſaffection is evidenced by an overt act of miſchief, *a fortiori* muſt it be to puniſh the treaſon of *any individual*, who cannot but be incapable of reſiſting the force of the law.

Might it not be likewiſe urged,—" Shall
" there then be no teſts either civil or religi-
" ous?

" ous? Shall all be equally eligible to every " office of honour, or emolument, although " their principles may be hoſtile to the eſtab- " liſhed religion, or civil conſtitution of their " country?—Might not church and ſtate be " overturned by the admiſſibility of ſuch cha- " racters?" Here the ſame anſwer may be employed, as that which I have above advanced. When any other weapon than argument is uſed to bring about the alteration or repeal of a law, which it is thought adviſeable to retain, let the attempt be reſiſted; it will then be early enough to do it with effect. But if the interference of the magiſtrate might in ſome inſtances prove too late, (which I can by no means think) I would rather ſubmit to the evil, than ſee government inveſted with a juriſdiction over the opinions of mankind. Permit me to quote a paſſage from a pamphlet publiſhed ſome years ago by a late eminent author, diſtinguiſhed no leſs by the amiable qualities of the heart than by ſtrong powers of underſtanding. " If magiſtrates will

" do

" do their duty, as ſoon as violence be-
" gins, or any overt acts, which break the
" peace, are committed, no great harm will
" ariſe from *keeping themſelves neutral* until
" then. Let however the contrary be ſup-
" poſed; let it be granted that civil authority
" would in this caſe often be too late in its
" exertions, the juſt inference will be, not
" that the liberty I plead for ought not to be
" allowed, but that there will be two evils,
" between which an option muſt be made, and
" the leaſt of which muſt be preferred. *One*
" is the evil juſt mentioned—the other in-
" cludes in it every evil, which can ariſe from
" making the rulers of ſtates judges of the
" tendency of doctrines, ſubjecting freedom
" of enquiry to the controul of their igno-
" rance, and perpetuating darkneſs, intole-
" rance, and ſlavery: I need not ſay which
" of theſe is the leaſt."[z]

To extend this inquiry ſtill further. It is the aim of a religious teſt to protect the

[z] See an Addreſs to the American States, by the late Dr. Rd. Price, p. 33.

church

church doctrines, which, it is ſuppoſed, would be expoſed to danger by the eligibility of Diſſenters to offices. But a civil eſtabliſhment of religion is the offspring of uſurpation, and the parent of evil; it is an infringement on the rights of conſcience and of God, an impediment to the progreſs of truth, and the ſource of endleſs ſtrife and animoſity.[a] Whatever meaſures are employed in defence of it can therefore only be conſidered as means to prolong the exiſtence of diſeaſe, or as props to a building which never ought to have been erected.

As a religious teſt is intended for the preſervation of the church, ſo is a civil for the defence of the ſtate. Now it muſt be the object of a civil teſt either to guard againſt all changes whatſoever, and by whatever means they may be accompliſhed, or only againſt

[a] See an 'Addreſs to the Public in anſwer to the principal 'objections urged in the Houſe of Commons againſt the repeal of 'the Teſt Laws, by a Maſter of Arts of the Univerſity of Oxford,' from p. 70 to 75.—See alſo a pamphlet publiſhed ſome weeks afterwards by Thomas Paine, entitled 'A Vindication of the 'Rights of Man,' from p. 74 to 78, both incluſive.

changes

changes through undue influence, or the abuſe of power. If the former be the end propoſed, I cannot but exclaim againſt its abſurdity and irrationality. Errors may have been committed in the firſt formation of a conſtitution, or the original principles may have been good, from which ſtriking deviations may have taken place; but there muſt be no renovation, no, not the leaſt correction.—A conſtitution may be called free, but have a power within it incompatible with genuine liberty; a conſtitution may have been deſigned for public happineſs, but be productive of public miſery; a nation may be ſo loaded and oppreſſed with taxes, as to call loudly for a form of government leſs expenſive than the pageantry of monarchy; but ſtill no part of the political fabric muſt undergo the ſmalleſt change, not a ſingle ſtone muſt be diſplaced.

Beſides, if all changes whatſoever are to be guarded againſt, then the teſt to anſwer the end propoſed ſhould be extended to the members of the ſenate, and the ſeat forfeited

feited upon propoſing a motion, which diſcovers ſentiments incompatible with the teſt.

Now, in the firſt place, a teſt upon admiſſion to the ſenate is a yoke upon the people at the time of election. In a free government, it is abſolutely eſſential that the public will ſhould be unreſtrained in the choice of repreſentatives. Then ſhould each conſtituent have the opportunity of giving his vote to him whoſe principles he moſt approves: but this opportunity he has not, if it be in vain to return a perſon who cannot ſubſcribe his aſſent to certain opinions.

In the ſecond place, a teſt which precludes every member from propoſing or aſſenting to any alteration in the conſtitution is equally improper, whether we conſider the ſenator as bound, or not bound, to follow the inſtructions of the majority of his electors.

If he be not bound, it is becauſe he ought to be free to judge for himſelf: and if he ought to have this liberty at all, he ought to have it in matters reſpecting the conſtitution, as well

as others; for forms of government, like all other things, muſt ſometimes require change.

If then he ought not to be reſtrained from propoſing or ſupporting any alteration in the conſtitution, a teſt which fetters him muſt evidently be wrong. John Earl of Argyle, in the reign of Charles IId, would not comply with the terms of the teſt act which had been lately voted by the Scotch Parliament, if he was to be conſidered as tied up from bringing forward any meaſures which appeared to him neceſſary for the regulation of the Church or State.[b] In the ſame manner every member of the ſenate, who looked upon himſelf as entitled, nay as called upon, to advance the general good in every poſſible ſhape, according to the dictates of own underſtanding, independently on directions from any quarter; in the ſame manner, I ſay, would every ſuch member object to a teſt, which was to continue binding upon him during the poſſeſſion of his ſeat in parliament.

[b] Burnet's Hiſtory of his own time, vol. ii. p. 168, 169.

But

But if the ſenator be under an obligation to obey the inſtructions of his conſtituents, then might he with great propriety ſay, "I "am commanded by the people to expreſs their "wiſhes by voting for ſuch a change in the "conſtitution, but I am prohibited by the teſt "from giving any vote at all upon this oc-"caſion." If the mandate of the people ſuperſede the teſt, then the teſt is nugatory, for its end is defeated; if the teſt be in force, the people muſt in vain ſeek the change which they wiſh. Both cannot operate together: the one muſt deſtroy the other.

Such are the conſequences of a civil teſt to guard againſt all changes whatſoever, and by whatever means they might be accompliſhed.

But let us ſuppoſe that it is only intended to prevent changes by abuſe of power. A ſhort obſervation will here be ſufficient. A teſt to exclude men of principle, that they might not uſe undue influence, or employ power unwarrantably, is unneceſſary. It is to prevent what would never happen. A teſt

to exclude the looſe moraliſt muſt prove ineffectual. How the advocates for civil teſts can eſcape from this dilemma I am at a loſs to conceive.

To the favourer of civil eſtabliſhments of religion the ſame form of argument might be propoſed. If the religious teſt be intended to ſecure the church againſt every change whatſoever, it is wrong, for it equally ſhuts out neceſſary and unneceſſary change. If it be only intended to prevent alterations through abuſe of power, it is either unneceſſary or ineffectual for the reaſons mentioned above.

If then teſts either anſwer a bad purpoſe, or fail in attaining the end propoſed, it is no ſubject for regret, if the uſe of them is incompatible with our principle, that the province of the magiſtrate ought to be confined to actions hurtful to ſociety.[c]

[c] I am happy in an opportunity of bringing forward a moſt admirable obſervation of Monſieur Clermont Tonnerre's, in a ſpeech to the National Aſſembly in favour 'of admitting non-'catholics, &c. to all the privileges of citizens.' "God," ſays he, "in enduing men with the faculty of being unanimous in "*morality*, has permitted them to make laws reſpecting it: God, "in

SECT. III.

That this juriſdiction, having ſuch an end, and being employed upon ſuch a ſubject, implies two abſurd propoſitions.

A Juriſdiction, which profeſſes to take cognizance of erroneous interpretations of the Chriſtian ſcriptures, from a view to the everlaſting intereſt of the individual, ſuppoſes—

1ſt, That a right faith is neceſſary to ſalvation, and that without it a conduct the moſt ſcrupulouſly upright is of no avail. A more unfortunate idea than this could not have entered into the mind of man: it laid the baſis of perſecution. Hence ſome concluded, conformably to the ground of this juriſdiction,

" in not permitting them to be unanimous in *religious tenets*, has " reſerved to himſelf undoubtedly the power of being *ſole legiſlator* " in thoſe points." See the Engliſh tranſlation of this ſpeech printed at London, p. 10. Probably it would have been better not to have enlarged ſo much upon this part of my ſubject, ſince it has been ſo well handled by many of Mr. Burke's opponents, and particularly by Mr. Paine and Mr. Mackintoſh, that very little new can be advanced.

that

that it was an act of kindneſs, by inflicting puniſhment for difference of religious opinions, to *force* the ſoul into a ſafe ſtate; whilſt others thought that they advanced the glory of God, and therefore their own merit, by proving themſelves the ready inſtruements of deſtroying the objects of his eternal diſpleaſure. To render an acceptable ſervice to that Being, who is perfect benevolence, was the reaſon uſually offered for waging war againſt Infidels, and proſcribing heretics, whether ſuch ſanguinary meaſures actually proceeded from ſuch a miſtaken principle of piety, or whether the cauſe of them lay concealed in a paſſion for military glory, or in ſome purpoſe of worldly policy.[d] But whilſt I ſtate that

[d] Henry the IId, and Philip of France, ſuſpended the war between them, that they might unite their arms 'in the cauſe of 'God,' to drive the Infidels from Jeruſalem. *Rapin*, vol. i. p. 242. Richard I. led an army to the aſſiſtance of the Chriſtians of Paleſtine. *Ibid.* vol. i. p. 245.—Henry IV. promiſed the Convocation, that he would be ready to concur with them in any meaſures for the puniſhment of obſtinate heretics. *Ibid.* vol. i. p. 487.—Each of theſe Princes would have ſought to juſtify his cruel proceedings, by declaring that he was deſirous of promoting the glory of God: but what in Henry II. and Philip of France was a zeal for religion,

was

ſuch have been the ſad conſequences, which have reſulted from the introduction of this idea, I mean not to contend that its falſehood is thus eſtabliſhed. It makes nothing againſt the truth of a poſition, that it has been the engine of miſchief to ſociety, either through the deſigns of wicked policy, or the ſuggeſtions of blind ſuperſtition. Does it unavoidably follow that all thoſe, who believe their miſtaken brethren excluded from the favour of God, muſt wreſt the ſceptre from the hands of the Almighty, and inveſt themſelves with the office of his vicegerent? May they not think that God will baniſh ſuch perſons from the bliſs of *another* world, without thinking themſelves entitled to harraſs them in *this?* Moſt certainly they may. Since then a perſecuting conduct is not the *neceſſary* reſult of a belief, that God will admit none to his bliſsful preſence but thoſe who hold the true faith, the blood which has been ſhed in the

was in Richard I. a paſſion for military fame, and in Henry IV. a ſcheme to ſtrengthen himſelf in the poſſeſſion of a recently acquired throne. *Ubi ſupra.*

deſtruction

deſtruction of heretics eſtabliſhes not the falſehood of that belief. He who would overthrow it, by ſhewing its pernicious tendency, muſt attempt it upon other grounds. Such grounds there certainly are, if the following deductions are legitimately inferred.

1ſt. If God excludes thoſe who hold erroneous opinions from eternal happineſs, he cannot be ſaid to love them. It is agreed on all hands that it is the perfection of our nature, and ought to be our aim, to conform, as much as poſſible, to the diſpoſitions of our Maker. We ought not therefore to love others, who differ from us in articles of faith. What a ſhocking notion is this! In the ſame family, if the underſtanding be left to its free exerciſe, there muſt be difference of opinion; each thinks his own right, and on this account muſt not have an affection for others, whom he ſuppoſes to be in the wrong. Upon this principle we are to be conſtantly at war with ſome of our beſt natural feelings, which, happily for mankind, are generally victorious in the conteſt.

2dly. That none but thoſe who hold the true Chriſtian doctrines can enter into the ſociety of the bleſſed in heaven, is a poſition, which arraigns both the wiſdom and juſtice of the Supreme Being. It proceeds upon the ſuppoſition, that he expects an univerſal agreement amongſt mankind in their religious opinions, (an impoſſibility upon the ſyſtem of nature, which he has created) and puniſhes for the inevitable conſequences of his own contrivance. Thus the ſtrict moraliſt, whoſe interpretation of ſcripture after the moſt humble and earneſt enquiry is found to be erroneous, and the virtuous unbeliever, whoſe want of faith in the miſſion of Chriſt is the effect of invincible ignorance, are objects of diſpleaſure to the moſt benificent of Beings, in conſequence of a conſtitution of mind implanted by himſelf. How impious is this doctrine! How derogatory to the moral perfections of the Deity! If it were true, God might with propriety be ſtiled a hard maſter, who expected to " reap where he had not " ſown,

FH
MVSEVM
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" ſown, and to gather where he had not " ſtrawed."

3dly. If none but thoſe whoſe belief is agreeable to the true Chriſtian faith can be admitted to eternal bliſs, ſad is the fate of all thoſe nations, to whom this diſpenſation is unknown, or by whom its divine original is not acknowledged! Sad alſo is the fate of all thoſe nations, and individuals, whoſe ſyſtem of faith is founded on a miſtaken apprehenſion of ſcripture. Perhaps the truth may not be delineated in any Chriſtian eſtabliſhment, nor may it have been diſcovered by any Chriſtian ſect; perhaps the whole creed of no ſingle individual may be in every article right; and thus the whole rational creation may be eventually conſigned " to everlaſting deſtruc- " tion from the preſence of the Lord." Let me therefore aſk, can the infinitely benevolent author of the univerſe make the ſalvation of mankind depend upon having a right belief, when the neceſſary reſult of ſuch a condition is, that few, very few indeed, if any, can

can be ſaved? It can never be: ſuch a notion is abſolutely inconſiſtent with juſt and worthy ſentiments of the divine character, and as ſuch, we may expect to find it at variance with the language of ſcripture. God is there deſcribed as a God of Juſtice, and of perfect benevolence, who is deſirous, "that none "ſhould periſh, but that all ſhould have ever-"laſting life:" but how does this appear, if everlaſting life *abſolutely cannot* be attained by ſome, and probably *may* not by any? It is indeed ſaid, that he "that believeth and is baptized "ſhall be ſaved, but he that believeth not, "ſhall be damned." If this paſſage will admit of the inference, that faith is neceſſary to ſalvation,[e] it means that a belief of chriſtianity, as oppoſed to the Jewiſh, Mahometan, or any other religion, is neceſſary to ſalvation. Thus it will not be eſtabliſhed, that error in

[e] I have uſed the term *if*, becauſe I find in a ſmall work aſcribed to the Biſhop of Landaff, entitled 'Conſiderations on the Ex-'pediency of Reviſing the Liturgy and Articles,' p. 63, that ſome men will not admit the word *damned* in this paſſage to have any reference to a future ſtate.

conſtruing

conſtruing the Chriſtian ſcriptures will be puniſhed with the forfeiture of eternal happineſs. But if the meaning of the above-cited paſſage be duly attended to, it will be found to give no countenance to ſuch a narrow idea that *Chriſtians only* will be admitted to the manſions of eternal bliſs. It has been clearly proved in the latter of two very elegant ſermons by the late juſtly-celebrated Dr. Samuel Clarke,[f] that he, "who believeth not," is in the proper conſtruction of the paſſage, "he "who wilfully and therefore vitiouſly refuſes "to conſider the evidences of chriſtianity; or "he who, whilſt he profeſſes to embrace the "whole of chriſtianity, partially diſbelieves "the particulars of God's promiſes, ſo as to "diſobey his commands." In proof of the firſt he ſhews that the ground of condemnation againſt thoſe who rejected the goſpel was, "that they loved darkneſs rather than light." In proof of the latter, he cites many parts of the ſacred writings, where unbelief is put for

[f] Vol. iii. p. 80.

diſobedience,

diſobedience, and one in particular, where it is ſo explained in a marginal note. In a word, he ſhews that no unbelief is there condemned merely as unbelief, but only when it ſprings from vice, or produces diſobedience.

I have beſtowed more time in ſhewing the abſurdity of ſuppoſing that a right faith is neceſſary to ſalvation, not only becauſe this opinion is the baſis of the juriſdiction for hereſy in the Spiritual Court, but becauſe it is publicly avowed by the church of England, and zealouſly maintained by many of its members. One of the 39 articles runs thus: " they alſo are to be had accurſed, that pre-
" ſume to ſay that every man ſhall be ſaved
" by the law, or ſect which he profeſſeth,
" ſo that he be diligent to frame his life ac-
" cording to that law, and the light of na-
" ture; for holy ſcripture doth ſet out unto
" us only the name of Jeſus Chriſt, whereby
" men muſt be ſaved." The creed, called the Athanaſian, ſtates, that a Trinity in Unity, and a Unity in Trinity, is " the catholic faith,

" which

" which unleſs a man believe, he ſhall periſh " everlaſtingly."[g] Conſiſtently with this charitable creed, I was once aſked by a clergyman of the eſtabliſhed church, whether I did not agree with him in thinking a belief in the doctrine of the trinity eſſential to ſalvation? There are indeed many, who believe that all thoſe who are not of the ſame ſentiments as themſelves, can entertain no well-founded hopes of Heaven. They view their neareſt relations who differ from them, as perſons in a ſtate of excluſion from the favour of God; but to reconcile this notion with the moral attributes of God, they urge that the pious and the good will certainly be converted to the true faith (the ſtandard of which is their own judgement) before they are removed out of this world. I wonder not a little that any

[g] The liturgy of the church of England was 'by the aid of 'the Holy Ghoſt, with one uniform agreement of the Biſhops, 'concluded upon.' See 2 and 3 Edward VI. c. 1. Might it not be ſuſpected that the Holy Ghoſt had withdrawn his influence when this uncharitable clauſe received the ſanction of the Rev. Bench; ſince 'the fruit of the ſpirit is love, joy, peace, long-ſuf-'fering, gentleneſs, &c."

rational

rational creature ſhould impute guilt to a miſtaken concluſion of the judgment; but ſtill more, that ſuch a ſentiment ſhould be entertained by perſons of talents and erudition. That " all error is innocent," is called " a dangerous notion," in a recent publication aſcribed to a lady of great literary reputation.[h] Is not this a contradiction in terms? Error is generally oppoſed to vice. Where there is no evil diſpoſition, there can be no criminality; and therefore mere error, or miſtake of judgment, can never partake of the nature of guilt. A perſon, who holds an erroneous opinion, may refuſe to attend to information—this is culpable; it is not however his error, but his averſion to truth, which conſtitutes his criminality. Had the doctrine he maintained been true, his perverſe diſpoſition would have been equally deſerving of cenſure.

But if all error be not innocent, where ſhall we draw the line? This author ſays, that the

[h] See an Eſtimate of the Religion of the Faſhionable World, p. 33, 34.

ſcriptures

ſcriptures ought to be the ſtandard, and that where their voice has ſpoken, there ſhall be no appeal. Between her and me there will be no diſpute on this head. If then the revealed word of God be the rule, in what manner will ſhe apply it; in what caſes ſhall error be regarded as not innocent? Shall it be in thoſe points where the author conceives that revelation is *not* clear and expreſs? Surely not: ſurely no perſon could for a moment entertain ſuch a notion. Who could ever imagine that God ſhould require from mankind an uniformity of belief, where a variety of opinion muſt *neceſſarily* exiſt? This would be to repreſent him as cruel, and delighting to puzzle his creatures, that he might damn them afterwards. This would be to make our own condition moſt wretched. Who would not curſe his exiſtence, if he thought himſelf liable "to periſh everlaſtingly," for an erroneous opinion of chriſtianity in a particular not aſcertained in the fulleſt manner by the founder of his faith? The author

ſeems

ſeems aware of this concluſion ,and therefore holds error only to be guilty in thoſe caſes which, in her judgement, are *clearly* revealed by the word of the God of truth. Mankind readily agree in giving univerſal aſſent to the moral precepts, ſince the terms, " do this, or, not do this," cannot be miſconceived. They agree alſo in ſome ſpeculative truths manifeſted by the goſpel; but as to the number of them, there are almoſt as many opinions as men. This author regards the locality of hell, and the exiſtence of a devil, as plainly revealed by the ſcriptures. She muſt therefore regard many pious and learned men, to whom this is not ſo obvious, as guilty, and in an unſafe ſtate. Others on the contrary, who, upon the authority of ſcripture, maintain ſome doctrines unacknowledged by this author, muſt upon her own principle eſteem her ſoul in great danger. The rule is uncertain, and brings with it all the torment of doubt as to our beſt, our eternal intereſt.

But this author ſeems to have impoſed upon herſelf; for the diſtinction ſhe eſtabliſhes is ſubverſive of her own principle. Where the word of God has not made the truth clear, ſhe deems error to be innocent; but ſhe views it as criminal, where the language of revelation cannot be miſunderſtood. What meaning does this convey? Where you may poſſibly be miſtaken, your error is pardonable; but if you hold a ſentiment *clearly* inconſiſtent with the revealed will of God, you have not the ſame excuſe: had you read it with a *fair and candid mind*, you could not poſſibly have been in an error, and for this reaſon you are highly blameable. This author, whilſt ſhe would prove error to be ſometimes guilty, places the ſole guilt not in the error, but in the diſingenuity which was the cauſe of it, not in a mere miſtake of the judgment, but in an evil heart of unbelief?

But that all error is innocent is called "a "dangerous" opinion. This author thinks that people are thereby induced to take unwarrantable

warrantable liberties with, and explain away, the plain terms of ſcripture. For my own part I can perceive no ſuch tendency. If I think that my humble and impartial enquiry involves no guilt, whatever may be my concluſions, I certainly ſhall not be afraid to inveſtigate the word of God, and to compare the ſeveral parts together, with a view to put a conſiſtent meaning upon the whole; but does it therefore follow that I ſhall not be ready to abide by obvious paſſages, where the leaſt ſhadow of contradiction cannot be found? If I think that the errors, which may reſult from fair reſearches into the word of God, are innocent, does it follow that I think I may innocently pervert the language of any text in thoſe oracles by which I am willing to be governed? By no means. There is not the moſt diſtant connexion: hence the poſition that all error, as ſuch, is innocent, cannot be called a dangerous, with the ſame propriety as the negative of it may be called an unhappy opinion. Hear the noble lan-

guage of Monſ. Rabaut de St. Etienne, a diſſenting miniſter in France, who was elected to the honour of preſiding in the National Aſſembly, "Error, Gentlemen," ſaid he, addreſſing himſelf to that body, "is not a crime; "he who profeſſes it, takes it for truth; it is "truth to him, he is obliged to profeſs it, "and no man, no ſociety, has a right to for-"bid him."[i]

2dly. The exerciſe of this juriſdiction not only implies that a right faith is neceſſary to ſalvation, but that this faith is known to the ſupreme head of thoſe courts, inſtituted to compel mankind to relinquiſh their errors. This ſupreme head is now the King, in whom an abſolute knowledge of the truth is ſuppoſed to reſide. Can any thing mark a greater degree of preſumption and arrogance? Might not a condemned Heretick with propriety ſay to a monarch preſiding as the final arbiter of truth, "What art thou? By what criterion

[i] A good account of this ſpeech may be ſeen in the appendix to Mr. Chriſtie's excllent work, entitled "Letters on the Revolution of France."

"doſt

" doſt thou diſcover the falſehood of thoſe
" ſentiments which thou thus proſcribeſt in
" me? Dreſt in a little brief authority, and
" perhaps moſt ignorant of what thou art
" moſt aſſured, thou requireſt me to adopt
" thy faith. With equal reaſon might I con-
" clude that thou art wrong, and exert myſelf
" to bring thee over to my way of thinking.
" The tinſel of thy robes cannot communicate
" a ſtronger degree of diſcernment, thy edu-
" cation is perhaps leſs favourable to the ac-
" quiſition of wiſdom, than that of any pri-
" vate gentleman. Drop therefore the exer-
" ciſe of ſuch authority, at leaſt until thou
" haſt found ſome certain way of knowing
" that the excluſive privilege of a freedom
" from error is conferred upon thee, and
" upon all thoſe, whether endued with talents
" or marked with folly, on whom thy crown
" may deſcend. Renounce that infallibility,
" which the adulatory and ſervile legiſlature
" of former days has annexed to the royal
" perſon: invade no longer the prerogative

" of

" of the moſt high GOD. Ceaſe to blaſpheme,
" by pretending to that power which belongs
" only to Omniſcience; deſcend into thine
" own rank, the rank of mortals, and confeſs
" thyſelf, not only ſubject to the corporeal,
" but alſo the mental infirmities of our com-
" mon nature."*

But ſtill farther to demonſtrate the abſurdity of this part of our government, let us ſuppoſe for a moment that truth is as transferable from one royal head to another, as the jewels of which the crown is compoſed. What is the conſequence? Under Henry VIII. the firſt infallible ſovereign[1] in the line of

* In Mr. Paine's Vindication of the Rights of Man, I recollect a beautiful paſſage ſo extremely appoſite, that I cannot refrain from ſubjoining it. " Who then art thou, vain duſt and aſhes, by what-
" ever name thou art called, whether a King, a Biſhop, a Church,
" or a State, at Parliament, or any thing elſe, that obtrudeſt thine
" inſignificance between the ſoul of man and its Maker—mind
" thine own concerns. If he believes not as thou believeſt, it is
" a proof that thou believeſt not as he believeth, and there is no
" earthly power can determine between you."

[1] The reader, who is at all acquainted with the hiſtory of his own country, need not be reminded that this monarch became inveſted with infallibility in conſequence of the Pope's refuſal to give a ſanction

of Engliſh kings, truth ſupported the doctrines of popery, and under Edward VI. ſhe undertook the cauſe of the reformed church. Under Mary ſhe reſumed her former ſtation, and under Elizabeth deſerted it again. Under one, if not more of the Stuart line,[m] ſhe renewed her friendſhip for the Roman Catholic church; and having ſince, with her uſual perfidy, betrayed it, ſhe now favours the Proteſtant eſtabliſhment. Tenets, once regarded as the true faith, are now looked upon as errors: opinions, once prohibited by law, are now eſtabliſhed by law: the diſbelief of tranſubſtantiation, once puniſhed with death by burning, and forfeiture of lands to the king, as in caſe of treaſon, is now neceſſary to the enjoyment of public honours and emoluments. Thus truth is no longer one

ſanction to his licentiouſneſs. But for his vicious diſpoſition Henry VIII. might never have been thought exempted from the poſſibility of error.

[m] How ſtrange was it to aſcribe by the conſtitution infallibility to James the IId, and yet compel him to abdicate the throne on account of his religion!

eternal

eternal and immutable thing, but, varying ever with the varying ſentiments of monarchs, may exiſt at different periods of time in contradictory propoſitions.

Further, if the reigning monarch be infallible, how needleſs is it for his ſubjects to ſtudy the ſacred oracles, or exerciſe their rational faculties in the inveſtigation of religious knowledge. "Examine all things, hold "faſt that which is good." "Believe not "every ſpirit, but try the ſpirits, whether "they be of GOD." "See that no man may "deceive, be always ready with meekneſs and "reſpect, to give to any man that demands "it of you an account of the hope which is "in you." Theſe and ſuch-like general exhortations in Scripture are altogether uſeleſs. The *Bereans* may be praiſed for *ſearching the Scriptures, whether theſe things be ſo*, but the *Engliſh* have a ſhorter and more certain mode of diſcovery: they have but to attend to the dictates of their ſovereign, and an unerring creed is formed without the leaſt trouble.

How

How ridiculouſly then have thoſe great and good men conducted themſelves, who have unprofitably conſumed their time in interpreting the various paſſages of the ſacred writings! By the voice of their monarch, all enquiries might have been ſatisfied, all doubts ſolved, and their anxious minds ſet at reſt. By diligently enquiring for themſelves, as the Scriptures command, they have poſſibly fallen into errors; but had they implicitly believed all the articles preſcribed by royal authority, they might have been ſure that they had adopted the true faith!

Moſt of theſe remarks are equally applicable, whether infallibility be aſcribed to a king, a pope, or any other mortal; but if poſſible the abſurdity is ſtill greater in attributing it to the ſceptered, rather than to the mitred ſovereign. The former is not educated for a religious profeſſion; and his time, from the moment he fills the throne, that is, from the moment he becomes infallible, muſt be conſtantly employed in civil concerns: but yet,

yet, as head of the church, to him all truth is known; to him all appeals from the Eccleſiaſtical courts muſt be made. Thoſe, who all their lives have been converſant with religious matters, *may* be miſtaken; but he *cannot*."[n]

" When the books of Mr. Whiſton were by " the whole convocation of biſhops and " clergy ſolemnly condemned as containing " *damnable and blaſphemous aſſertions againſt the* " *doctrine and worſhip of the ever-bleſſed Tri-* " *nity, and all the chriſtian people were earneſtly* " *beſought by the mercies of Chriſt to take heed* " *how they gave ear to thoſe falſe doctrines, as they* " *tendered the honour and glory of our Saviour,* " &c. this ſolemn cenſure was of no force, " no efficacy at all, in this primitive, apoſtolic " church, becauſe the Queen (Ann) did not " think proper to confirm it. Obſerve and " wonder. Her Majeſty's opinion upon thoſe

[n] Conformable to this idea is the language of the ſtatute book. Upon iſſuing a commiſſion to the Biſhops, &c. " to review the book " of Common Prayer, it was required that all propoſed alterations " ſhould be exhibited and preſented for his Majeſty's farther al- " lowance and confirmation." See the 13th and 14th Charles II.

" deep

" deep myſterious points, the Trinity, Incar-
" nation, Generation of the Logos, &c. was
" different from that of her learned biſhops
" and clergy, and her judgment is of more
" weight than that of the whole clergy in
" convocation convened."[o]

[o] See Toogood's Calm and Plain Anſwer, p. 34.

CHAP. V.

Obſervations on ſome parts of the Trial.

SECT. I.

On convening a perſon, and compelling him to make known his ſentiments.

IT has been ſeen that a perſon, under ſtrong ſuſpicion of hereſy, may be brought before the court, and for want of ſufficient evidence to convict, called upon to pronounce either a general or ſpecial form of abjuration. If he actually entertain the tenets imputed to him, and be a virtuous character, he cannot but refuſe to comply; in which caſe ſentence immediately follows. Thus a man is ſummoned to give an account of his private thoughts, and furniſh the proofs which ſubject himſelf to puniſhment. What a formidable power! What a dreadful tribunal! It is ſimilar in this part of its proceſs to the court of inquiſition, which reſemblance indeed might have been expected, for both courts are turbid ſtreams from

from the ſame polluted ſource, both having originated in the uſurped dominion of the Roman Pontiff over the conſciences of mankind. It is the duty of the magiſtrate not to invade, but protect, the right of private judgement. " Although I am bound to " every act of duty, I am not bound to that " all ſlaves are free to: utter my thoughts?" Tyranny againſt the body is a crying evil; but tyranny againſt the mind is the worſt ſpecies of tyranny. Oppreſſion, where no remedy is provided by law, is a great grievance; but oppreſſion under the ſanction of law is a ſtill greater. In both caſes the miſery is without redreſs: but in the latter the pang is rendered more poignant by the reflection, that the ſhield which ought to have proved a defence againſt the wound, affords effectual ſecurity to him who unjuſtly inflicts it. The attack of an adverſary from him whoſe friendly arm ſhould have been a protection, is the ſtrongeſt aggravation of ſuffering. The virtuous emperors Trajan, Titus, and Theodoſius, would

would not reſtrain the thoughts or words of their ſubjects; nay, the cruel Tiberius, when unruffled with paſſion, was uſed to declare, that in a free ſtate the mind and tongue ought to be free. But even thoſe of the preſent times, who place a right in the legiſlature to make perſons reſponſible for the manifeſtation of dangerous opinions, ſtill allow "that "the bare entertaining, without an attempt "to diffuſe them, is *hardly* cognizable by hu-"man authority."[p] It can be no matter of concern to government whether my enquiry has terminated in concluſions conformable to eſtabliſhed ſentiments, or whether my deliberations have aſſured me of their falſehood, provided that I confine my thoughts to my own breaſt. Whether I was actuated in the inveſtigation by a ſincere love of truth can only be known to the great Searcher of hearts, and cannot therefore be the object of human judicature.

[p] Blackſtone's Commentaries, vol. iv. p. 49. The learned author ſeems afraid of pronouncing abſolutely, that unuttered ſentiments are not cognizable by human authority. *Hardly* is a ſtrange half and half term, but there can be no medium, either they are or they are not cognizable.

Sect. II.

On the power of the Eccleſiaſtical Judge to determine at the time of trial what ſhall be deemed Hereſy.

IT has appeared that the ſtatute of Elizabeth extends not to the dioceſan, ſo that his power is now as unbounded as at the common law. It has alſo appeared, that if he was obliged to obſerve the directions of this ſtatute, ſtill in any point not pronounced to be hereſy, either by the four firſt general councils, or by parliament with the aſſent of the clergy in convocation, he is left entirely to himſelf to decide, according to his own interpretation of the canonical ſcriptures, whether the tenet be erroneous. He pronounces this judgment at the time of trial, and the party, if diſſatisfied, may appeal *en dernier reſort* to the King. In contemplating this proceſs, the mind immediately revolts at the idea, that a perſon may be brought before this tribunal, and puniſhed

puniſhed for that which no authority had previouſly adjudged to be an offence. Every crime ought unambiguouſly to be deſcribed, and proper caution given by a timely promulgation. The law ſhould be clear, and all ſhould have an opportunity of knowing it, that ignorance may be no excuſe in *any*. Hence it is a maxim of Engliſh juriſprudence "*ignorantia juris non excuſat*"—"ignorance is "no excuſe for breaking the law." But to inflict penalties where the crime is not preciſely aſcertained, and rendered public ſo that it might have been known, is to annex guilt to an ignorance which could not have been prevented, and to puniſh it by an *ex poſt facto* law. Nothing can be more cruel, nothing can be more arbitrary, nothing more contrary to the proceeding of our other courts of criminal judicature. There the judge is not entruſted with ſuch extenſive and alarming powers, he ſits to expound, not to make laws, nor can the accuſed ever alledge in his defence, that he had no means of knowing what line of conduct

duct he ought to have obſerved. But in the inſtance before us neither the ſtricteſt uprightneſs of conduct, nor even the greateſt circumſpection of ſpeech, is the leaſt ſecurity againſt a proſecution. A poſition hitherto deemed innocent, and unſuſpiciouſly delivered under the warm impulſe ariſing from a conviction of its truth, nay an unuttered opinion, ſtamped with no mark of legal diſapprobation, may become the occaſion of ſevere puniſhment. Are ſuch laws compatible with a free conſtitution? Some have boaſted that whilſt they diſcharged their duty as citizens, no human being could moleſt them with impunity. How great a miſtake is this! They may be amongſt the beſt members of the commonwealth, and at the ſame time cruelly harraſſed under ſhelter of the law. Is this the perfect code ſo much the theme of the moſt exalted eulogy? In many reſpects it may deſerve the praiſe which it has received; but in this I am ſure it ought to be branded with deteſtation. I make no ſcruple to affirm, that it is

better to have laws the moſt ſanguinary and diſproportionate to the offence, provided it be clearly defined, than be liable to be called to an account for an *uncertain* crime, even though the conſequent puniſhment were the moſt lenient. In the former the ſubject has a clear rule by which he may walk; in the latter he is expoſed to perpetual and unforeſeen danger. Will it be objected that the heretic is not liable to ſuffer for what he did not before know, becauſe he has the means of avoiding the puniſhment, after the Judge has pronounced his opinions to be erroneous? Before the ſtatute 29th of Charles II. if a perſon, who had complied with the form of general abjuration, fell into hereſy, nothing could ſave him, even though he could not know the particular hereſy, of which he was accuſed, to be ſuch until the time of trial. He was then conſidered as one *verè relapſus*, but this is not now the caſe; recantation will at all times put a ſtop to the proceedings, and procure the abrogation of the ſentence; but does

does this ſhew that a perſon is not liable to be puniſhed for what he did not know to be an offence? Suppoſe that he could not conſcientiouſly retract, then does he experience the hardſhip of which I complain. Will it be contended, that under ſuch circumſtances he *ought* to recant? No one will ſurely be ſo immoral as to recommend it. Far preferable is the advice of the poet, who thus ſings:

——" *Phalaris licet imperet ut ſis*
" *Falſus, et admoto dictet perjuria tauro,*
" *Summum crede nefas animam præferre pudori;*
" *Et propter vitam vivendi perdere cauſas.*

Juv. 8 Sat. 81.

CHAP. VI.

Remarks ariſing from a view of the Puniſhment.

SECT. I.

The impropriety of the Puniſhment—No kindneſs in it—Inſtead of making Converts, it makes Hypocrites or Martyrs.

THE writ *de hæretico comburendo* having been taken away by the ſtatute 29 Charles II. hereſy is now no longer capital; but puniſhable, as has been already explained, by eccleſiaſtical cenſures not extending to death. Excommunication with all its train of ſeverities attends a perſeverance in rejecting the preſcribed forms of recantation. It deſerves to be noticed, that the offence is a diſagreement in opinion, which ought no more to be imputed as a crime, than a difference in the ſhape of features, or the colour of a countenance; and that the puniſhment can only fall upon the honeſt man. The hypocrite

crite may avoid it, but it muſt fall with all its weight upon him who is ſteady in not renouncing his convictions, and fears the Creator more than the vengeance of the creature. The former avoids it by the commiſſion of a crime, and the latter is expoſed to it by his virtue. The impropriety of a puniſhment, which is affixed to no real guilt, and neceſſarily operates only againſt the conſcientious, cannot ſurely be diſputed.

But this proceſs is ſaid to originate in kindneſs. Was it kindneſs then in the dioceſan, whilſt he held it as an article of faith that eternal fire was the portion of the inflexible heretic, to deliver him over to the ſecular arm that, if the King pleaſed, capital puniſhment might be inflicted? Was it kindneſs thus to ſubject another to a painful death, and never-ending torments, for a merely ſpeculative opinion? Would the merciful man, who pities the loſt ſoul, and anxiouſly deſires to recover it from perdition, conduct himſelf thus? Far otherwiſe: By argument and perſuaſion

ſuaſion he would try to extirpate the fatal error, and ſhould his endeavours prove unſucceſsful, he would indulge the hope, that time might work the deſireable change; but never would he by inflicting death take away from the unhappy perſon even the poſſibility of avoiding the wrath to come. By the following hiſtorical fact we may ſee in what light theſe ſanguinary proceedings appeared to the amiable and unprejudiced mind of Edward VI. " Cranmer was employed to perſuade the " King to ſign a warrant for the execution " of a woman by name Joan Bocher, who " obſtinately perſiſted in the tenets ſhe had " avowed. King Edward, thinking it a piece " of cruelty, too like that which the refor- " mers condemned in papiſts, to burn any for " their conſciences, aſked Cranmer, What, " my Lord! Will ye have me ſend her quick " to the Devil in her error? Cranmer found " it ſo difficult to overrule theſe gracious " ſcruples, that he confeſſed he had never ſo " much to do in his life, as to cauſe the King

" to

" to ſubſcribe the warrant. The King, whilſt " he ſigned the fatal mandate, watered it with " his tears, and ſolemnly declared that he " would lay all the blame on Cranmer before " God."[q] Well indeed might this prince fear the conſequences of his own conduct, and ſeek to excuſe himſelf to his conſcience.

Let us now turn our attention from the antient mode of treating hereſy to the preſent ſyſtem. Where is the kindneſs of bringing a perſon before a tribunal, and if he cannot change his opinion, " of ſhutting him within " a priſon for life, and depriving him of the " power of making a will, or of ſuing for any " debt or legacy? &c." I am perſuaded that few can hear this account without exclaiming againſt the ſeverity of ſuch proceedings; and when I recollect that men are ſubject to them for their religious opinions, ſo far from agreeing with the late Sir Wm. Blackſtone that the ſtatute of 29 Charles II. by repealing the writ *de hæretico comburendo*, " removed

[q] Rapin, vol. ii. p. 14, and the note No. 10.

" the

" the laſt badge of perſecution," I muſt think that this ſtatute itſelf, by the remaining powers which it ſanctions, may be adduced to diſprove the obſervation of the learned writer.

But it will be urged, in vindication of the kindneſs of theſe courts, that the final object of the penalties is the extirpation of errors which endanger man's ſalvation. To this it may be anſwered, that if the kindneſs of the motive be admitted, the means have no tendency to accompliſh the propoſed end. Conviction can only be produced by ſound and temperate reaſoning. Hence an erroneous faith is not to be diſſipated by violence, but by addreſſes to the underſtanding. " Thomas " Arundel archbiſhop of Canterbury tried to " perſuade Henry V. of England, that fire " and faggot were the only means of extir- " pating hereſy, and that it was abſolutely " neceſſary for the intereſt of religion to pro- " ceed againſt Sir John Oldcaſtle, baron of " Cobham, according to the utmoſt rigour of " the law. The King, having calmly heard

" him,

" him, replied, that he never could approve " of force in reclaiming heretics, and the " rather as experience had but too frequently " ſhewn that rigorous methods were as effec- " tual againſt truth as againſt error."[r] This was a wiſe anſwer; but ſuch was Henry's inconſiſtency with his own principles, that when he found himſelf incapable of converting him by arguments, he conſented to compulſory meaſures, of the inefficacy of which he was before ſo ſtrongly ſatisfied. Oldcaſtle was proſecuted, was immoveable, was condemned, and had he not found means of eſcaping from priſon, would doubtleſs have died a martyr. A weaker mind would have proved a hypocrite. The conſtancy of Archbiſhop Cranmer was overcome by the hopes of ſaving his life, and he was prevailed upon to ſign ſix diſtinct forms of recantation, without having experienced the leaſt change in his ſentiments. I cannot do better than give the words of the hiſtorian. " The Queen, who pretended a

[r] Rapin, vol. i. p. 505.

" merit

" merit in forgiving him his private offences,
" and being moved only by a zeal for religion,
" ſeeing all her meaſures broke by his abju-
" ration, pulled off the maſk, and ſigned a
" warrant for burning him, notwithſtanding
" his abjuration. Then it was that Cranmer
" came to himſelf, and full of ſhame and con-
" fuſion retracted at the ſtake, and reſolved
" the hand, which ſigned the fatal abjuration,
" ſhould firſt ſuffer. He held it extended in
" the fire until it dropped off, and then was
" obſerved to beat his breaſt with the other.
" Thus he expired, teſtifying a repentance for
" the fault which he had committed." The hiſtorian adds a note upon the ſubject, in which, from the authority of Fox, he ſays, that Cranmer, whilſt burning, frequently cried out, " that unworthy hand!"[s] Here we are furniſhed with a moſt dejecting inſtance of weakneſs; and if the dread of ſuffering and diſſolution had ſuch an effect on Cranmer, might it not be concluded to have operated in

[s] Rapin, vol. ii. p. 45, and the note No. 1.

the

the ſame manner upon others? Thus the proſpect of pain, and terrors of death, may make martyrs or hypocrites, but they can never make converts. The eccleſiaſtic therefore, when he would torment his fellow-creatures to produce a change in their opinions *pro ſalute animæ*, cannot but fail of accompliſhing his *pious* and *humane* purpoſe.

Sect. II.

A further Survey of the conſequences of puniſhing Heretics. The abſurdity of imagining that ſuch a cruel practice is pleaſing to the Supreme Being.

1ſt. IT has been ſhewn that they, who think their own faith abſolutely neceſſary to ſalvation, cannot love thoſe who diſagree with them in religious ſentiments, and that this unhappy notion is the ſource of the greateſt animoſity between man and man.[t] It might here be added, that laws for the puniſhment

[t] See p. 56.

of

of heretics have a tendency to keep alive thoſe animoſities, to fan that flame, which every good man would wiſh to extinguiſh. When a government ſets the example of harraſſing perſons for a difference in religious opinions, it is a ſanction for bigotry in the ſubject.

2dly. Severe treatment does not prevent the ſpread of obnoxious ſentiments, but on the contrary is found to promote it. The page of hiſtory abounds with inſtances of this truth; but the following is ſo ſtriking, that I am tempted to inſert it. " About the year " 1160, one Waldo, a merchant of Lyons, " applying himſelf to the ſtudy of the ſcrip- " tures, and finding there were no grounds " there for ſeveral of the Romiſh doctrines, " particularly tranſubſtantiation, publickly " oppoſed them. His followers, from him " called Waldenſes, being chaſed from Lyons, " ſpread over Dauphiné and Provence. Upon " which Philip Auguſtus is ſaid, in order to " ſtop their growth, to have razed 300 gen- " tlemen's ſeats, and to have deſtroyed ſeveral

" walled

" walled towns. But this, inſtead of decrea-
" ſing their numbers, made them overſpread a
" great part of Europe, and multiply ſo faſt,
" that in leſs than an hundred years after
" Waldo, in the ſmall biſhoprick of Paſſau
" alone, there were above eighty thouſand.*"

Thus perſecution cheriſhes the growth of what it would deſtroy; and this equally, whether the doctrine be true or falſe; if it be true, oppoſition accelerates its reception, and it will ſtand its ground when oppoſition is no more: if it be falſe, its oppreſſed votaries are furniſhed with excellent means of making converts: they may contend that their adverſaries would not have recourſe to violence, but from a conviction of their deficiency in argument: they may raiſe the pity of the hearers by an affecting narration of the ſufferings of their brethren, and of the fortitude with which they are borne by many; and when once the paſſions are engaged, the multitude are eaſily won over to a cauſe: but

* Rapin, vol. i. p. 280, note No. 5.

let

let the civil power exchange a ſyſtem of intolerance for abſolute neutrality, the ill-founded doctrine will ſoon be brought into diſcredit, it will vaniſh before free and unbiaſſed diſcuſſion—the moſt powerful and only ſucceſsful antagoniſt of error.

3dly. Severe treatment by *profeſſed* Chriſtians for difference of opinion prevents many from becoming converts to chriſtianity. From unamiable and cruel proceedings in the believers of a religion, it is too common to conclude that the religion itſelf is not of heavenly deſcent: but this is a precipitate, and unwarrantable inference. With as much propriety might deductions be drawn againſt the divine original of the ſcriptures, from the corruptions of Chriſtian eſtabliſhments, as from the perſecuting conduct of Chriſtian profeſſors. Is it not wonderful that men of underſtanding ſhould form ſo premature a judgment? Would they but examine for themſelves, I cannot conceive that there would be many unbelievers; ſo forcible are the

the evidences of the truth of chriſtianity, and ſo conſiſtent and rational are all its doctrines. How abſurd then is it to attempt a juſtification of the puniſhment of heretics, upon the ground that it adds to the number of the faithful! Nor leſs abſurd is the idea, that a perſecuting zeal in ſupport of what is thought to be the true faith is pleaſing to the Supreme Being. Can it be pleaſing to Him, that his creatures ſhould torment each other on account of the neceſſary reſult of the natural conſtitution of the human mind? Can it be pleaſing to the God of wiſdom and love, that his creatures ſhould ſeek to effect, by pains and penalties, that which is ſolely to be accompliſhed by the milder method of argument and perſuaſion? Was force employed to propagate the belief of the goſpel? No: force was employed againſt Chriſt and his Apoſtles, but none was uſed by them. Chriſt always refers to the works performed by his Father, who dwelt in him, for the truth of his divine miſſion. When Nathaniel thought

that

that nothing good could come out of Nazareth, he was only invited " to come and ſee," not *compelled* to acknowledge Chriſt as the Meſſiah. The falſe and uncharitable zeal of the apoſtles, when they wiſhed to draw down fire from heaven upon the Samaritans, was diſpleaſing to the meek and lowly Jeſus. Peter, when he cut off the ear of the high prieſt, was rebuked by his maſter for uſing the ſword. It was by appeals to the underſtanding of mankind, that Chriſt aimed to make converts to the religion which he preached. It was becauſe his religion could ſtand the teſt of rational enquiry, that it triumphed over the united powers of the world, ſo that the gates of hell ſhall not prevail againſt it.

It will not here be improper to conſider who were heretics according to the ſcripture notion, and how they were treated. The general notion of an heretic, according to ſcripture, is one who voluntarily unites himſelf to any denomination of Chriſtians. I ſay voluntarily, ſince the Greek word αιρεσις, from

from which hereſy is derived, ſignifies choice. To ſhew that this is the meaning of the term when it is uſed in an innocent ſenſe, the learned Dr. Foſter cites many texts. An heretic in a culpable ſenſe is therefore, as the ſame author likewiſe obſerves, "one who "knowingly eſpouſes a falſe doctrine, is in- "ſincere in his profeſſion, and aſſerts and de- "fends what he is convinced is contrary to "Chriſtianity, and conſequently one who "maintains and ſupports the intereſts of a "faction to ſerve ſome baſe deſigns."[w] The text which the Doctor has choſen, is alone ſufficiently ſtrong to his purpoſe. "A man "that is an heretic after the firſt and ſecond "admonition reject, knowing that he that is "ſuch is ſubverted, and ſinneth, *being con-* "*demned of himſelf.*"[x] Thus his ſin conſiſts in making a profeſſion, which is contradicted by his conſcience. And how is ſuch a man to be treated? He is not to be puniſhed by im-

[w] Dr. Foſter's ſermons, vol. i. p. 276.

[x] St. Paul's Epiſtle to Titus, iii. 10, 11.

priſonment, or civil diſabilities as now, nor by the inflic̃tion of capital puniſhment as formerly; but, in the language of the Apoſtle, after the firſt and ſecond admonition is to be reje̊ted. How different then is the ſcriptural idea of hereſy, and the ſcriptural mode of treating it, from the definition and puniſhment of it according to our laws! To apply the term hereſy by way of reproach to a conſcientious ſeparation from an eſtabliſhed church but ill becomes the mouth of Chriſtians, and the exiſtence of a penal juriſdic̃tion over religious principles is a diſgrace to a Chriſtian country.



CHAP. I.

On the propriety of annulling the Powers of the Spiritual Courts in caſes of Hereſy, with an attempt to give a complete Anſwer to the Poſition that there is no reaſon for aboliſhing unexecuted Laws.

IN attending to the foregoing pages the reader muſt perceive, that the power of the Spiritual Court with reſpect to hereſy is an uſurpation on the rights of man, has its foundation in the moſt abſurd bigotry, blaſphemouſly lays claim to the omniſcience of the Almighty, is contrary to the language and ſpirit of Chriſtianity, and purſues its end by means which can never be attended with ſucceſs. What is the inference? What but this? That the ſpiritual arm ſhould by an act of the legiſlature be deprived of ſo monſtrous a juriſdiction. I would however, for the ſake of urging ſtill further the propriety of its repeal, add ſome other obſervations deducible

from a ground which has not been before-mentioned.

The fundamental principle of this juriſdiction, viz. that there is but one faith which can ſecure ſalvation, is given up by the legiſlature. This is obvious from continuing two eſtabliſhments of religion, the one in England, the other in Scotland. If therefore the legiſlature would act conſiſtently, it ought to expunge all laws founded upon a principle from which it ſo ſtrikingly deviates in its practice; it ought to eraſe from the liturgy and articles of the church of England every part which aſſerts the neceſſity of a particular belief to ſalvation, or at leaſt every part which denounces damnation upon ſuch as embrace a different perſuaſion. And if the church of England would act conſiſtently, ſhe ought to unite heartily in ſuch a reform. If, in the erection of a new upon the ruins of an antient eſtabliſhment, ſhe exerciſed the right of private judgement, ought ſhe to withhold from another what ſhe claimed for herſelf?

ſelf? Ought ſhe to perſecute others, whoſe concluſions in the interpretation of the ſacred writings are different from her own? Ought ſhe not rather to promote the abolition of laws incompatible with the right which ſhe aſſerted for herſelf, laws which had a tendency to prevent the completion of her deſigns, and extend the reign of papiſtical darkneſs? Ought ſhe not to ſtand foremoſt in removing every, even the ſmalleſt reſtraint upon the conſciences of mankind? Certainly this *ought* to be her conduct: I ſpare myſelf the pain of commenting on what it is.

To theſe and many other reaſons, which might be advanced for repealing this juriſdiction, I am prepared for one anſwer, the hackneyed anſwer of all ſuch who are incapable of replying to the objections brought againſt them: "Theſe laws are never exe-
"cuted: the Spiritual Court has ceaſed to
"proceed againſt heretics." If theſe laws are never executed, let me then demand why are they not repealed? One excuſe for continuing

tinuing unexecuted laws is, that at ſome future time it may be proper to carry them into execution, though not now. In the firſt place let me obſerve, that if theſe laws are not now proper to be enforced, they can never be: the ſpirit of diſcuſſion was never ſo great: it penetrates every ſubject, and declares itſelf with freedom: there never was, and never can be a greater ſcope for the *kindneſs* of this court. And if it be *kindneſs* at ſome future time to harraſs the individual for the ſake of his ſoul, it muſt be equally ſo at all times. The paſt and the preſent generation has ſurely an equal claim with the future to the *beneficence* of the dioceſan. Theſe laws therefore, if at all proper to be enforced, muſt be ſo at every period. Further, has it not been ſhewn that no earthly tribunal has a right to exerciſe ſuch a juriſdiction? Uſurped authority ought ever to be oppoſed: it ſhould not have the power to move a ſingle ſtep. And has it not been made obvious that nothing but an addreſs to the underſtanding can bring about the

the wiſhed converſion? If a penal juriſdiction can never accompliſh the propoſed ends, it ought to be overthrown from its baſe.

Thus much have I offered with a view to prove that theſe laws ought *never* to be executed, and therefore their exiſtence is not to be vindicated upon the ground that their enforcement at ſome *future* time may be proper.

But let us ſuppoſe (what we by no means grant) that theſe laws ought not to be executed now, but ſhould be preſerved that they might be ready for action when the occaſion ſhould require, what ſecurity can there be againſt an *unſeaſonable* operation? Of all the unexecuted laws, theſe are the worſt. It is felony to ſteal a hawk, and death to aſſociate one month with Egyptians; or to wander, being a ſoldier or mariner, without a teſtimonial under the hand of a Juſtice."[y] But theſe, and laws like theſe, may be avoided; a perſon need not break any of them, or ſubject himſelf to ſuch exceſſive and unjuſtifiable puniſh-

[y] See Principles of Penal Law, p. 19, and the references.

ment:

ment: but how ſhall he command his thoughts, which are liable at any time to be explored? A proceſs may be inſtituted to compel him to make them known, and ſhould they be regarded as heterodox, to receive others on pain of very ſtriking ſeverities. Notwithſtanding the thoughtleſs eaſe of the multitude, the ſerious and reflecting, however they may make it a matter of principle to break theſe fetters upon conſcience, cannot be free from ſolicitude, when they conſider that they hold, by the precarious tenure of a boon, what belongs to them as a ſacred right. When religious liberty has no other baſis than connivance, or ignorance, it is but a tottering fabric. The bigoted or the malicious proſecutor may at any time compel even the liberal and enlightened dioceſan to diſcharge the painful duty impoſed upon him by the laws of his country.[z]

[z] I am credibly informed that during the laſt application for the repeal of the Teſt Laws, the pulpit of a Pariſh Church in the county of Wilts reſounded with phraſes of animoſity againſt Dr. Prieſtley and the late Dr. Price, than whom two men of more irreproachable character

Let us now propoſe ſome *general* arguments, for the purpoſe of ſhewing the impropriety of retaining *any unexecuted laws whatſoever*. I have endeavoured to make it appear, in a former part of this treatiſe, that actions only are cognizable by human power.[a] Hence all penal laws ſhould have for their object ſome overt act of miſchief. Whenever, or by whomſoever ſuch a deed ſhall be committed, puniſhment ſhould *invariably* follow for the ſake of preventing ſuch offences; for certainty of ſuffering is eſſential to that end. But if the laws be made without a reference

character never exiſted. Denunciations were likewiſe thundered againſt the whole body of Diſſenters, and *pious* hopes expreſſed, that they might ſoon wither like graſs upon the houſe-tops. When this intelligence firſt reached me, I thought that there could be but few, very few, whoſe breaſts were inhabited by ſo diabolical a ſpirit; but the riots at Birmingham, and the rancour which has ſince ſhewn itſelf againſt Diſſenters, oblige me to confeſs myſelf under a miſtake. If the writ *de hæretico comburendo* was now in exiſtence, might it not without breach of charity be ſuppoſed, that many members of the eſtabliſhed church would ſeize the flaming torch, contend with each other for the honour of being foremoſt in ſetting fire to the pile, and contemplate with ſavage joy the agonies of expiring innocence?

[a] See p. 36, to 52.

to

to that object, they ought immediately to be repealed: if the will of the citizen be reſtrained in one unneceſſary particular, he is not in poſſeſſion of that portion of freedom which juſtly belongs to him.

Another general argument to the ſame effect is this: that whenever hitherto unexecuted laws are enforced, injuſtice muſt be committed. He who ſuffers for the violation of them in one period, and he who eſcapes with impunity in another, muſt be equally criminal. Has not the former then juſt reaſon of complaint?

Another mode of defending unexecuted laws is, that an uſeful purpoſe may be anſwered by preſerving them merely *in terrorem*. As the ſpiritual juriſdiction over hereſy is ſaid to be founded on a motive of kindneſs, I am not called upon to reply to an argument irrelevant to the point; but I feel myſelf impelled to examine it from a deſire of attempting to refute every argument in defence of preſerving a ſingle unexecuted law. When it

it is the intention to prevent by terror only, and not by certainty of puniſhment, then the penalties are more than commonly ſevere, that the violation, which is not to be puniſhed, may be prevented by a view of the dreadful conſequences. But the end propoſed muſt be defeated; becauſe a great and diſproportionate ſeverity is alone ſufficient to inſpire the hope of impunity.[b] The beſt anſwer however, as it appears to me, conſiſts in an application of the reaſoning which has been before uſed. What is the action, from the performance of which the citizen is to be deterred? If it be an action detrimental to ſociety, it ought not to be overlooked; if not, no perſon ſhould be reſtrained from doing it; for it is not a proper object of legiſlation. Let all laws which

[b] The late Sir W. Blackſtone, vol. iv. p. 51, ſeeks to juſtify the continuance of ſome ſevere penalties "*in terrorem* at leaſt." Thus he invites people to brave thoſe laws, which from his own confeſſion ought not to be executed, and defeats the end for which he would retain them. When ſo eminent a lawyer, who was afterwards advanced to ſuch high profeſſional honours, publicly declares, that the enforcement of certain ſtatutes would be unwarrantable, the fear of breaking them muſt neceſſarily be diminiſhed.

tranſgreſs

tranſgreſs the proper bounds of juriſdiction, be repealed; let thoſe which are permitted to remain, aſſign no penalty but what is exactly proportioned to the offence, and there will be no occaſion of any excuſe for not carrying them into execution. If ſo neceſſary a reformation in our code could be accompliſhed, it would be held in general reverence, and command general obedience; but laws, daily broken with impunity, weaken the authority of the whole ſyſtem, and bring contempt upon the legiſlature which continues them in exiſtence.

PART II.

Of Formal Heresy by the Statute Law.

Remarks upon the Statute 9th and 10th William IIId. c. 32.

SECT. I.

In what the Offence conſiſts—who are capable of committing it—and what is the Puniſhment.

WE have already examined hereſy, as it ſtands at the Common Law, or, in other words, as it may be proſecuted in the Spiritual Courts. It remains to ſpeak of hereſy by the Statute Law.

In former times many opinions were deemed heretical, and puniſhable as ſuch by our book of ſtatutes: but there is now only one ſpecies of hereſy cognizable by act of parliament.

parliament. This act is the 9th and 10th of William IIId. c. 32, in the examination of which I propoſe to conſider,

1ſt. In what the offence conſiſts:

2dly. Who are capable of committing it:

3dly. What is the puniſhment:—And to make ſome remarks under each head.

This act, called "an act for the more effec-
"tual ſuppreſſing of blaſphemy and profane-
"neſs," after reciting "that many perſons
"have of late years openly avowed and pub-
"liſhed many blaſphemous and impious
"opinions, contrary to the doctrines and
"principles of the Chriſtian Religion, greatly
"tending to the diſhonour of Almighty God,
"and may prove deſtructive to the peace and
"welfare of this kingdom," enacts, "for the
"more effectual ſuppreſſing of the ſaid de-
"teſtable crimes, that if any perſon or per-
"ſons, having been educated in, or at any
"time having made profeſſion of the Chriſ-
"tian Religion within this realm, ſhall by
"writing, printing, teaching, or adviſed
"ſpeaking,

" ſpeaking, deny any one of the perſons in the " Holy Trinity to be God, or ſhall aſſert or " maintain there are more Gods than one, or " ſhall deny the Chriſtian Religion to be true, " or the holy ſcriptures of the Old and New " Teſtament to be of divine authority, ſhall " for the firſt offence &c." Thus an offence againſt this ſtatute conſiſts in avowing or publiſhing a diſbelief either of Chriſtianity,[c] or the Trinity in Unity. By ſubjecting both to the ſame conſequences, one would almoſt believe, that a denial of the godhead of Chriſt was the ſame as a denial of the divine original of the ſcriptures, although thoſe who cannot allow the former expreſſly found their opinion upon the authority of thoſe very ſcriptures.

It is not to my preſent purpoſe to ſpeak of

[c] This act ſeems to have been dictated by the ſame ſpirit with which the caſe between Gelly and Cleve was adjudged a few years preceding. It was heard in Michaelmas term 4th and 5th William and Mary, and the Court held, that trover will lie for a Negro, " becauſe Negroes are Heathens."—See Mr. Hargrave's argument in the printed caſe of Somerſet the Negro.

him,

him, who, " after having been educated in, " or made profeſſion of the Chriſtian Reli- " gion," declares himſelf no longer to be a believer in the ſcriptures, ſince he is to be regarded not as an heretic, but an apoſtate. I cannot however refrain from aſking, why muſt every one, who renounces his Chriſtian profeſſion, be charged with diſhonouring God, and being a dangerous member of the community? The change of ſentiment may have been produced by a conviction that God never revealed his will to man, or that he revealed it by others, and not by Chriſt: and ſhall it be ſaid that he who holds only the religion of nature, or indeed that every man who holds any other religion than Chriſtianity, whether he be a diſciple of Confucius, of Mahomet, or of Moſes, cannot entertain reverential notions of his Maker, or faithfully diſcharge the duties of a good citizen? Such language is as uncharitable as it is untrue.

But to examine the guilt of him " who, " having been educated in or made profeſſion " of

" of the Chriſtian faith, denies any one of the " perſons in the Holy Trinity to be God, or " aſſerts that there are more Gods than one."

It is ſolemnly declared by the legiſlature, that the doctrine of the Unity of God in perſon and eſſence is " contrary to the principles " of the Chriſtian Religion." On the other hand, men, not inferior in abilities and religious knowledge to the members of any ſenate whatſoever, have pronounced the idea of a Trinity to have no foundation in ſcripture. With whom then ſhall the deciſion reſt? If we ſuppoſe however the Unitarian to be miſtaken, how does he diſhonour God? The worſhip of the Father only, ſays the Trinitarian, robs Chriſt, who is a part of the Godhead, of that honour which is juſtly his due. But might not the Unitarian reply, that the worſhip of Chriſt confers that glory upon the Son, which ſolely belongs to the Father, becauſe he alone is God, and thus the Trinitarian doſhonours God? But the truth is, that neither the one nor the other diſhonours

God. The conſcientious Trinitarian, whilſt he worſhips not only the Father, but the Son and Holy Ghoſt, acts from a fear of offending God. And is not this the caſe with the Unitarian? When he openly bears teſtimony to the doctrine which he believes to be the truth as it is in Jeſus, does he diſhonour God? Rather might it be ſaid that he evinces a love of truth, and ſenſe of duty, which muſt be acceptable to the Almighty. When he refuſes to render to any other being that worſhip which he conſiders as due to the Father alone, does he diſhonour God? Rather might it be ſaid that he is jealous of his honour, and fearful of derogating from his glory. If both therefore, whilſt they avow their own opinions, and adopt a worſhip conformable to them, are actuated by a fear of God, how can either be accuſed of diſhonouring him? Both equally adore a Firſt Cauſe, however they may differ as to the mode of its exiſtence; both deſire the favour of the Deity, though one may think there are three perſons in one

God,

God, and the other, that " to him there is " but one God, even the Father." What are the words of the enlightened and liberal Biſhop of Landaff? " We truſt that he will " pardon the Unitarian, if he be in an error, " becauſe he has fallen into it from the dread " of becoming an idolater, of giving that " glory to another, which he conceives to be " due to God alone. If the worſhipper of " Jeſus Chriſt be in an error, we truſt that " God will pardon his miſtake, becauſe he " has fallen into it from a dread of diſobey- " ing what he conceives to be *revealed* con- " cerning the nature of the Son, or *commanded* " concerning the honour to be given to him. " Both are actuated by the ſame principle, " the fear of God; and though that principle " impels them into different roads, it is our " hope and belief that if they add to their " faith Charity they will meet in heaven."[a] The temper of this Biſhop is as different from that diſplayed by King William and his Par-

[a] See the preface to Watſon's Theological Tracts, p. 17.

liament, as modeſty from preſumption, as a Chriſtian from an antichriſtian ſpirit.

Let me further aſk, how the avowal or publication of a belief in the Unity of God in perſon and eſſence can poſſibly "prove de-"ſtructive to the peace and welfare of the "kingdom?" It is here to be noticed, that the ſtatute, although it aſſerts that many of late years had openly avowed and publiſhed theſe impieties, does not accuſe theſe perſons of having diſturbed the peace and welfare of this kingdom, but only intimates, that the opinions which they advanced *may* have that effect. Thus it is not pretended to eſtabliſh by facts the connexion between the "deteſta-"ble crime" of denying the Divinity either of the Son or the Holy Ghoſt, and ſeditious or turbulent conduct. What poſſible connection indeed can be conceived? It will be urged perhaps that he, who is ſo daring as to declare a ſentiment ſo profane, muſt be a flagitious character, and therefore would not heſitate to engage in any conſpiracy againſt the

the ſtate: but this argument can have no weight, ſince it has been already proved that the tenet in queſtion deſerves not thus to be reprobated. What a ſtrange government is ours? A tenet, certainly the moſt innocent, ſuppoſing it to be falſe, cannot even be " af-" firmed in an adviſed manner."

We now proceed to the ſecond head, and are to enquire, who are the perſons capable of committing the offence ſtated by this act. Theſe are all ſuch " as have been educated " in, or have at any time made profeſſion of " the Chriſtian Religion within this realm," and conſequently all others are exempted from the operation of this ſtatute, and may avow, publiſh, and ſpread to the utmoſt of their power the pernicious doctrine. Let it not be objected that the ſtatute preſumes all who are born in this country, in which there is a Chriſtian Eſtabliſhment, to have been educated in a belief of Chriſtianity. Had that been the caſe, what occaſion was there for ſpecifying any thing relative to the edu-

cation

cation of the offender? The terms " if any " perſon or perſons ſhall, by writing, &c." would have been ſufficient. All the other words would have been omitted as unneceſſary. Such as have " been educated in &c. " or have at any time made profeſſion of the " Chriſtian Religion," can only mean, ſuch as have been educated, &c. or, not having been educated, have at any time made profeſſion, &c. Thus it is ſeen, that the ſtatute implies the contrary of the ſuppoſition that all the natives of this country have been educated in a belief of Chriſtianity; and ſuch as have neither been educated in, nor at any time have made profeſſion of this religion, it permits to circulate the blaſphemous opinion, which it was the final object of the legiſlature to ſuppreſs. If the ſpread of a doctrine " may " prove deſtructive to the peace and welfare " of the kingdom," it will equally produce that miſchievous effect, by whomſoever it is propagated. What then is the ground of this diſtinction? Is it becauſe thoſe, who have

no

no acquaintance with Chriſtianity, cannot know that a faith in the Unity of God " is " contrary to the ſcriptures and diſhonour- " able to God," and therefore are not guilty of impiety in affirming their diſbelief in the divinity of the Son or the Holy Ghoſt; whilſt thoſe, " who have been educated in, or have " made profeſſion of the Chriſtian Religion," ought to know better, ought to know that the true doctrine is the doctrine of the Trinity? To this I reply: It is here taken for granted, and is the baſis of all the reaſoning, that the creed, ſaid to be the creed of Athanaſius, is ſo clearly revealed in ſcripture, that its truth muſt neceſſarily be acknowledged by ſuch " as have been educated in, or have made " profeſſion of the Chriſtian Religion." But the difference in ſentiment upon this point amongſt ſo many learned and good men ſufficiently diſproves this poſition; and thus, if this be the foundation of the diſtinction made by the act, it is entirely overthrown.

Our

Our diviſion of the ſubject now calls upon us to advert to the puniſhment, to which the offenders are liable. " Any perſon or per-
" ſons for the firſt offence ſhall be adjudged
" incapable and diſabled in law, to all intents
" and purpoſes whatſoever, to have or enjoy
" any office or offices, employment or em-
" ployments, eccleſiaſtical, civil or military,
" &c.[e] and every office, place, or employment,
" which he or they ſhall enjoy, or poſſeſs, at
" the time of his or their conviction, ſhall be
" void. And if any perſon or perſons ſhall
" be lawfully convicted a ſecond time, then
" he or they ſhall from thenceforth be diſ-
" abled to ſue, proſecute, plead, or uſe any
" action or information in any court of law
" or equity, to be guardian of any child, or
" executor, or adminiſtrator of any perſon,
" or capable of any legacy, or deed of gift, or

[e] The Advocates for the Teſt Laws in the Houſe of Commons contended, that ineligibility to offices was not to be conſidered as a puniſhment. Let them read this act, in which incapacity to hold " employment or employments, civil, eccleſiaſtical or military," is made the conſequence " of an offence," " a crime," " a de-
" teſtable crime."

" to

" to bear any office civil or military, or " benefice eccleſiaſtical, for ever, within this " realm, and ſhall alſo ſuffer impriſonment " for the ſpace of three years without bail or " mainprize from the time of ſuch convic- " tion." It is provided alſo, " that any per- " ſon or perſons, convicted of all or any the " aforeſaid crime or crimes, ſhall for the firſt " offence, upon his, her, or their acknowledg- " ment and renunciation of ſuch offence, or " erroneous opinions, in the ſame court " where ſuch perſon or perſons was or were " convicted, within the ſpace of four months " after conviction, be diſcharged from all " penalties and diſabilities incurred by ſuch " conviction."

Is this puniſhment calculated to promote the views with which it was ordained? The legiſlature, regarding certain opinions as blaſphemous, and liable to produce civil commotions, aimed to ſtop their progreſs by ſuppreſſing the avowal or publication of them under pain of the above-cited penalties. It

is

is allowed, that if the legiſlature could ſucceed in ſuppreſſing the avowal or publication of a religious tenet, the propagation of it would neceſſarily be impeded. But this, as well as every other penal ſtatute, muſt ever be incompetent to ſuch a purpoſe. There have been men in all ages, who have choſen to endure even an agonizing death, rather than withhold open teſtimony to their convictions; and men there ever will be, who will think the profeſſion of their religious ſentiments a duty of indiſpenſable obligation, and defy every hazard, rather than conceal them. Should the inveſtigation of ſuch men lead to a diſbelief of the Godhead of Chriſt, or the Holy Ghoſt, they will frankly avow it, and conſider that which appears to the legiſlature "a deteſtable crime," to be a dictate of virtue. If therefore capital puniſhment be not adequate to intimidate men from openly declaring their religious opinions, much leſs will that effect be produced by an impriſonment for three years, or by civil diſabilities.

How

How many chooſe rather to continue incapacitated as Diſſenters, than by ſubmitting to the teſt laws comply with a condition, which their conſcience cannot approve! Neither the degraded ſtate to which they are reduced, nor the honours or emoluments to which they might poſſibly be raiſed, unſettle their virtuous reſolution. This deſcription of men, if the doctrine of the abſolute Unity of God appear to be founded in truth, will never be deterred by any penalties from aſſerting boldly in the face of the world, that " the Father is " the only true and living God, and him only " will they continue to ſerve."

It is obvious by what has been advanced, that no terrors, not even thoſe of death, are ſtrong enough to prevent the virtuous character from making profeſſion of his religious ſentiments. As to thoſe who are deſtitute of piety and moral rectitude, the ſtatute has opened a door for their eſcape upon the *firſt conviction*, by affording them an opportunity of ſaving themſelves by renunciation. What then

then would be the effect of carrying into execution this law? The lovers of truth and goodneſs would entirely diſregard it, unintimidated in avowing the dictates of their conſcience; the unprincipled would be under no reſtraint, as far as they could offend with impunity.

Is it not evident from theſe conſiderations, that neither the aſſigned puniſhment, nor indeed any puniſhment whatſoever, was calculated to put a ſtop to the avowal or publication of the tenet ſo much dreaded; and thus the legiſlature propoſed to prevent the ſpread of it by means totally inadequate to the end.

But it might be contended ſtill farther, that the very paſſing of this ſtatute, and much more the enforcement of it, ſo far from ſuppreſſing, has a tendency to propagate the doctrine, which is ſuppoſed to be ſo pernicious. Suppoſe a perſon to have delivered from the pulpit that Chriſt was not God, and to have endeavoured to prove it with all the force of his powers, does it prevent others from believing

believing the poſition that the preacher has been *compelled* to retract it? Does he thus manifeſt a converſion of ſentiment? When a renunciation is made under the proſpect of moleſtation, is it poſſible to diſtinguiſh the honeſt convert from the diſmayed hypocrite? Will the reading a preſcribed form of abjuration wipe out the impreſſions made by former arguments? The poiſon (for ſuch it would be called by the legiſlature of thoſe times, and even by that of the preſent day) has entered the circulation, and muſt have its courſe. The words are gone forth, and cannot be recalled: the public curioſity is only attracted towards them by any ſpecies of legal cognizance whatſoever: a more general examination of the ſentiment ſucceeds, and amongſt the number of enquirers, ſome of courſe will become advocates for the opinions of the preacher. Or ſuppoſe a work to have been publiſhed, in which an able attempt is made to ſupport the ſame doctrine, does the renunciation of the author confine the peruſal of the

the production to more narrow limits? Far otherwiſe: the act of recantation brings it into notice, an avidity to read it is excited, and ſome may doubtleſs be induced to adopt the ſentiments of the writer.

But let us ſuppoſe that the preacher or the author ſhould not only perſiſt in rejecting the preſcribed abjuration, but repeat the offence, and ſubmit with unſhaken firmneſs to the conſequences of a ſecond conviction. To ſuffer the loſs of perſonal liberty for three years, and the deprivation for life of all civil rights, in defence of a doctrine, is certainly no evidence of its falſehood: but be this as it may, it has been found by experience that an unchangeable fortitude in enduring penalties for conſcience ſake, contributes to ſpread the opinions which are ſo ſteadily maintained.

Thus the governing powers are not only miſtaken, in imagining that this ſtatute would operate to the ſuppreſſion of the tenet which it is thought ſo deteſtable a crime to avow;

but

but employed the very means of bringing about an effect diametrically oppoſite to their wiſhes.

Sect. II.

On the Propriety of repealing the Statute.

WE have ſeen that the civil magiſtrate, even according to the principle of our laws, has no juriſdiction over any opinions but ſuch as affect morality, and may thus endanger the public peace. Here he claims an interference *pro ſalute reipublicæ*. If then the belief of the abſolute Unity of God has not (as we have endeavoured to ſhew in the preceding ſection) the leaſt tendency to promote vice or diſorder in the ſtate, this opinion is not an object of civil coercion. How ſtrong an inſtance does this ſtatute afford of the bad effects which are derived from the allowance of a right in government to take cognizance of opinions on any ground! If this tenet, certainly

certainly harmleſs, though it were admitted to be erroneous, can be thought by the legiſlature dangerous to the welfare of ſociety, there is no tenet but may be accuſed of a pernicious tendency.

I would however go a ſtep further: I would contend, that not only the clauſe directed againſt the Antitrinitarian, but the whole ſtatute, ought to be repealed. To eſtabliſh this point, I need only refer to that part of this work, in which I have contended, that the juriſdiction of human tribunals ought to be confined to overt acts of miſchief.[f]

[f] See p. 36, to 52.

THE CONCLUSION.

The advantage reſulting even from an unſucceſsful application to Parliament for the abolition of the Spiritual Juriſdiction over Hereſy, and the repeal of the ſtatute 9th and 10th William IIId.—The hope that this treatiſe may prove uſeful, even though it ſhould fail in producing ſuch an application.—A wiſh to reſtore the rights of the mind, and the moſt eligible method of accompliſhing ſo deſirable an event.

THE power of the Spiritual Courts, and the act of King William, both of which have been the ſubject of this treatiſe, afford a proper ground for an application to parliament. Great advantages would be derived from it. Although all Proteſtant Diſſenters are not liable to the ſtatute of King William, yet all of them are advocates for the right of private judgment; and therefore ought heartily to concur in reſcuing it from an infringement. All Diſſenters whatſoever,

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whether Proteſtant or Catholic, are liable to be harraſſed by the ſpiritual court for hereſy, and ſhould on that account unite in ſeeking its ſubverſion. If a motion of that kind ſhould ſucceed, ſome of "the poſſible in-"ſtruments in the hand of tyranny" are deſtroyed. I am however ready to allow, that in all probability a defeat would follow. I infer that the ſtatute of King William would meet with an advocate in Mr. Pitt, who would render its exiſtence ſecure againſt all oppoſition. By an inexcuſable ignorance a clauſe in the Toleration Act of King William, deſigned for the relief of Proteſtant Diſſenters, was copied into the late bill in behalf of the Roman Catholic Diſſenters. A proviſo was inſerted, that the benefits of this act ſhould not extend to "perſons writing "againſt the Trinity," without recollecting, that this was an abſolute ſuperfluity, all Roman Catholics being Trinitarians.[g] This

[g] "Proviſo, that the act ſhall not extend to perſons writing "againſt the Trinity." The proviſo immediately ſubſequent has likewiſe attracted my notice. "Proviſo, that no benefit in the act ſhall

inadvertency was no ſooner diſcovered, than corrected. Mr. Fox begged that it might be retained awhile, ſince he ſhould be glad of having an opportunity of diſcuſſing the propriety of excepting "ſuch as write againſt "the Trinity" from the benefit of toleration. Mr. Pitt deſired that the ſuperfluity might be expunged; but at the ſame time obſerved, that whenever the general queſtion, ſuggeſted by Mr. Fox, came to a diſcuſſion, he fancied that it would be found rather more doubtful than the Hon. Gentleman imagined. Theſe words naturally lead us to conclude, that the oppugners of the Trinity ought not in Mr. Pitt's opinion to be tolerated; and thus we are furniſhed with a convincing proof, that

"ſhall extend to any Diſſenting catholic eccleſiaſtic officiating in "any place or congregation with a ſteeple or bell, &c." The Proteſtant Diſſenting miniſter is not, I believe, under any ſuch prohibition, for I find no ſuch clauſe in the act of the 1ſt William and Mary, c. 11. Why are ſteeples and bells to be made marks of diſtinction; and if they be uſed as ſuch, why are they denied to the Roman Catholic *only?* See the printed heads of "a bill to relieve, upon "certain conditions and under reſtrictions, perſons called Proteſting "Catholic Diſſenters," &c.

nothing *very friendly* to the cauſe of religious liberty is to be expected from him. Or if any reform of antient enormities could be carried through the Commons, what hopes are to be formed of the Lords, who were ſo panic-ſtruck at the thought of innovation, as to repel the motion of Lord Stanhope for the repeal of ſeveral obſolete ſtatutes, which impoſe the moſt ſhocking ſeverities for abſence from the ſervice of the eſtabliſhed church? If this then be the caſe, why preſent an application to parliament only to be rejected? The uſe will be this.

In the debates upon the ſeveral motions for the repeal of the Corporation and Teſt Acts, Mr. Pitt aſſerted, that the Proteſtant Diſſenters ought to enjoy, and actually did enjoy, a complete toleration. Mr. Pitt here doubtleſs intended to ſay, according to Mr. Powys's definition, "that they might profeſs their "religious opinions openly, and worſhip God "in their own way."[h] This was the narrow

[h] See the debate in Woodfall's Diary, on the laſt application in 1790, for the repeal of the Teſt laws.

notion

notion which the Hon. Gentleman entertained of a complete toleration; but did he mean to ſay, that they enjoyed even this toleration, becauſe the laws againſt them were not executed? The ſame argument he might have uſed, had the writ for burning heretics now mouldered on the file. This never could have been his idea: beſides, he well knew, that when government is ſaid to tolerate any ſect, it is underſtood that it permits an indulgence under ſanction of law, not ſupinely connives at a practice prohibited by law. Mr. Pitt therefore wiſhed to convey what the Earl of Guildford ſo roundly aſſerted upon the ſame occaſion, namely, "that there was "nothing in the laws of England which "prevented men from performing religious "worſhip in their own way, or interfered "with them in private life."[i] This idea, coming from ſuch diſtinguiſhed gentlemen,

[i] See "the debate in the Houſe of Commons on Mr. Beaufoy's motion, May the 8th, 1789, for the repeal of ſuch parts of the Corporation and Teſt Acts as affect Proteſtant Diſſenters:" printed for J. Johnſon, 1789.

was

was ſeized by many of the members of the ſenate; from them it paſſed to the eſtabliſhed clergy, and afterwards to the people at large, who caught the ſounds, which echoed through the walls of Bartlett-buildings.[k] Now ſhould Mr. Pitt oppoſe an application to parliament for taking away the power of the ſpiritual courts over hereſy, and repealing the act of King William, his ignorance and inconſiſtency will at the ſame time appear:—his ignorance, in aſſerting that there are no laws which impede a man in the exerciſe of a worſhip which he moſt approves, or in the avowal of his religious opinions;—his inconſiſtency, in refuſing to repeal ſuch laws, though he exultingly triumphed that there were none of that deſcription, and declared, that the Proteſtant Diſſenters already enjoyed a complete toleration. This will help to open the eyes of a deluded public. It is a duty incumbent

[k] See the ſecond reſolution of a numerous general meeting of the ſociety for promoting Chriſtian Knowledge, aſſembled at Bartlett-buildings, Feb. 1, 1790.

upon

upon all to venture no aſſertion without diligent enquiry into its truth; but this duty demands peculiar attention, in every queſtion of national importance, from thoſe who are no leſs looked up to for their abilities and erudition, than their exalted ſtation. Error, when it begins with them, very quickly ſpreads through all ranks of ſociety. The public will then perceive, that he who ought to have been moſt careful in offering nothing but the moſt correct information, has contributed to lead them into a falſe notion, and is not therefore deſerving of an *implicit* faith. Conſiſtency of conduct is a very great ornament even in the moſt private condition of life, and whenever we obſerve any individual to have forfeited his title to it, we juſtly withdraw our confidence, ſince there never can be a reliance, that ſuch a character will at any time act in a manner correſpondent to the opinions which he profeſſes. Mr. Pitt poſitively aſſured the public, as his decided opinion, that without a reform of parliament,

England

England could not exiſt as a country for ſeven years. He has preſided at the head of this unequal and corrupt repreſentation for a longer time, and made but one feeble attempt to reſtore it to its original purity. Had he been deſirous of conſiſtency, he would have brought forward plan after plan, until one which was proper had been diſcovered; and half the zeal, uſed for a majority on other occaſions, would have obtained it on this. To this inſtance of inconſiſtency will be added another no leſs ſtriking, ſhould the Diſſenters bring forward the motion which I have recommended; and thus the people will be a little ſhaken in that blind attachment to the miniſter, by which they are hurried into an approbation of all his meaſures without the leaſt previous examination. They will be inclined to ſuſpect whether his oppoſition to the repeal of the Corporation and Teſt Acts proceeded from principle, and hence much of the weight of his future oppoſition, on that or any ſimilar occaſion, will be taken away.

Such

Such are the advantages, which in my mind would follow even from the loſs of the application which I have ſuggeſted; but if the Diſſenters ſhould not think fit to obey this call, I will not deſpair that theſe ſheets may prove uſeful. Some able writer may be ſtimulated by this ſhort work to take up the ſame ſubject, or perhaps to point out to the public other laws which bind religion, and are no leſs exceptionable than thoſe which I have delineated.[1] Happy indeed will be the day, when crimes ſhall be regarded as the only proper foundation for the impoſition of penalties, when every peaceable citizen, whatever

[1] The following note is added with a view to obviate an objection, which may probably be advanced againſt this publication. It will perhaps be ſaid, "the formidable power in the Spiritual "Court, of proceeding againſt heretics, is but little known, and "by pointing out its exiſtence, do you not put arms into the hands "of thoſe who may be glad to employ them?" To this I reply, let it be granted that this uſe may be made of the information here given, what would be the effect? If the preſent age be endued with a truly charitable and chriſtian ſpirit, merited indignation would light on the head of the mercileſs bigot, who endeavoured to carry into practice ſo deteſtable a juriſdiction, and the nation would perhaps be rouſed to demand its abolition: if on the contrary the public

whatever may be the complexion of the opinions which he entertains, ſhall be entitled to all the benefits of citizenſhip; and when human power ſhall no otherwiſe interfere with reſpect to religion, than to protect each individual in the rights common to all, the rights of worſhipping his Creator in his own way, and of freely avowing and ſupporting his own religious ſentiments. But how is this truly deſirable event to be accompliſhed?

public mind be tainted with ſo ſtrong an animoſity againſt Diſſenters, that proſecutions againſt them would, ſo far from being diſcouraged, be highly approved, then indeed it might be expected, that the puniſhment of hereſy would become frequent: but when the devouring paſſion was once ſatiated, reaſon would reſume her empire; conſideration would again take place; ſuch proceedings would appear, what they really are, unjuſt and inhuman; and the people, as the only compenſation for the miſchief which their frenzy had produced, would perhaps call upon the legiſlature to repeal a ſyſtem which authorized ſuch enormities. Thus, whether the times be or be not liberal, good would reſult from a proſecution in the Spiritual Court for hereſy. If therefore this publication ſhould be attended with that effect, there would be no ground for lamentation in an *enlarged* point of view. And as to ſuffering *individuals*, they muſt reconcile themſelves to their fate. If partial evil be productive in the end of general benefit; if to feel the weight of perſecution's iron rod has a tendency to place poſterity beyond its reach, let them not only not repine, but rejoice, that they are laying the foundations of happineſs for future generations.

To

To think that government will commit an act of ſuicide upon its own power, and willingly emancipate the mind from its cognizance, is a vain hope. Government is no leſs tenacious now, than at any former period, of exerciſing a power to grant, or to withhold toleration. The ſtatute of 1ſt William and Mary, c. 18, *tolerates* Diſſenting Miniſters who ſign the articles of the Eſtabliſhed Church, a few only excepted, in the exerciſe of a ſeparate worſhip; and an act of the preſent King[m] extends the *favour* to all Diſſenting Miniſters who ſubſcribe a belief in Chriſtianity. The latter, no leſs than the former, diſowns a right inherent in nature, and independent

[m] This act was ſolicited for the relief of Antitrinitarian Diſſenting Miniſters, who could not comply with the terms, and therefore could not enjoy the benefits, of the 1ſt William and Mary, c. 18, commonly called the Toleration Act. Let us then enquire what change is made in their ſituation by the ſucceſs of their application. Inſtead of ſigning their aſſent to the "articles of religion mentioned in the ſtatute made in the thirteenth year of Queen Elizabeth, (except as in the ſaid act made in the firſt year of the reign of King William and Queen Mary, is excepted)" they are required ſolemnly to declare, that they are "Chriſtians, and "Proteſtants, and as ſuch, believe the ſcriptures of the Old and "New

dependent on all government, a right to worſhip GOD as the conſcience of each individual

" New Teſtament, as commonly received amongſt Proteſtant " Churches, to contain the revealed will of God, &c." Every Proteſtant Diſſenting Miniſter, who has made this ſubſcription, and taken the oath, and made the declaration againſt popery according to the act of King William and Queen Mary, is " entitled to all " the exemptions, benefits, privileges, and advantages, granted to " Proteſtant Diſſenting Miniſters by the ſaid act made in the firſt " year of King William and Queen Mary." Hence he is no longer liable by the 17th Charles IId. c. 2, to be reſtrained, " under " 40l. penalty, from coming, or being, except in paſſing upon the " road, within five miles of any city or town corporate :" nor is he longer liable to 22d Charles IId. c. 1, " An act to prevent or " ſuppreſs ſeditious conventicles :" nor to the penalty of one hundred pounds mentioned in an act made in the 13th and 14th Charles IId. c. 4, entitled " An act for the Uniformity of public Prayer." But it muſt be remembered, that he cannot avail himſelf of theſe exemptions, unleſs he avoid to preach or write againſt the Trinity, all the oppugners of that doctrine being excepted by a ſpecial clauſe in the Toleration Act. In conſequence of this proviſo the Anti-trinitarian Miniſter, to be freed from the above ſtatutes by having ſubſcribed according to this act of his preſent Majeſty, muſt either never preach upon the Unity of God, or if he ſhould preach upon it, muſt be careful not to ſupport his own doctrine by attempting to prove the falſehood of the contrary, but leave his congregation to conjecture, whether he means an abſolute Unity, or an Unity in Trinity. Nothing but cowardice and equivocation can entitle him under this act of George III. to any of the advantages of the 1ſt of William and Mary. The honeſt and fearleſs aſſerter of the undivided perſonality of the Deity is, notwithſtanding this ſubſcription, no leſs open to the above-mentioned penalties, than to a proſecution under the ſtatute which is now the ſubject of conſideration.

This

dual directs. The ſevere and oppreſſive laws againſt the Roman Catholics, and the recent

This act of George the IIId further declares, that every Proteſtant Diſſenting Miniſter, ſubſcribing a belief in Chriſtianity as aforeſaid, &c. "ſhall be entitled to the benefits of an act made in the "tenth year of the reign of Queen Anne;" and alſo "ſhall be "exempted from ſerving in the militia of the kingdom, and alſo "from any impriſonment, or *other puniſhment*, by virtue of an act "made in the thirteenth and fourteenth years of the reign of King "Charles IId. entitled, An act for the uniformity of public prayer, "&c. or of an act made in the fifteenth year of the ſame reign." Theſe exemptions, benefits, privileges, and advantages, are open to every ſubſcriber, whether he preach or write againſt the Trinity, or not. Thus the oppugner of the Trinity, making the declaration exacted by this ſtatute, is liable to one hundred pounds under the act of the 13th and 14th Charles IId. and yet not liable to impriſonment *or other puniſhment* under the ſame act; that is, he is and is not liable to a penalty of one hundred pounds under the ſame act.

With reſpect to the ſubſcription itſelf required by the ſtatute of George IIId, that, and every other ſubſcription muſt be exceptionable. Thoſe who ſubſcribe the 39 articles, or a part of them, or only a belief in Chriſtianity, equally acknowledge a right in the legiſlature to take cognizance of religious opinions; whilſt thoſe who cannot ſubſcribe, are not only debarred of that protection which is due to all, but expoſed to penalties. The only difference between the three ſorts of ſubſcription which I have mentioned, is this; as the ſecond is leſs confined than the firſt, ſo is the third than the ſecond; and every ſubſcription, in proportion as it is leſs confined, ſwells the number of thoſe, who give into ſo unworthy a compliance, in the ſame ratio as it decreaſes thoſe who are injured by the excluſion. I have uſed the terms *unworthy compliance*, becauſe the practice of ſubſcribing, even though the creed be the actual belief of the ſubſcriber, countenances an uſurped dominion over the rights of conſcience.

bill

bill for the relief of a certain part of that body, acknowledge one and the ſame unjuſtifiable principle. The parliaments of former reigns enacted the moſt cruel penalties to guard againſt the pernicious tendency of the tenets of that denomination. The exiſting parliament, no leſs apprehenſive of theſe tenets, has upon renunciation granted an exemption from the perſecuting ſtatutes which remain in being, and may be enforced againſt thoſe who refuſe to make the conditional declaration. Thus there is clearly implied, both in the firſt formation of theſe laws, and in the indulgence which has been lately accorded, the ſame pretenſion to a right in government to inflict penalties, and require teſts on account of religious opinions. Hence, in a true compariſon between the government of the preſent day and that of more ancient times, it appears, that both have equally invaded the rights of mankind.

But although it cannot be expected, that this or any future government will voluntaril

tarily reſign that dominion under which the rational faculty has been ſo long depreſſed, ſtill this uſurped ſceptre muſt, however reluctantly, be ſurrendered. Let the people be made acquainted with their rights, and it will become the general wiſh, as it is the general intereſt, to ſeparate religion from the civil power, nay, to aboliſh every juriſdiction but for the commiſſion of actual injury. The parliament muſt ever yield to the voice of the nation. It may talk of its ſuperiority to all controul, but the will of the people, whether it be expreſſed by inſtructions, or addreſſes, or even if it be couched in the humble language of petition, cannot be reſiſted. What ſtronger inſtance can be produced than the ineffectual oppoſition to Mr. Pitt's appointment? He retained his office as Miniſter under the ſupport of the nation againſt a majority of the Houſe of Commons.[n]

[n] It is ſaid by two very able writers, Mr. Paine, and Mr. Mackintoſh, that this miniſter came into power unconſtitutionally. With ſubmiſſion to their better judgment I muſt declare myſelf of a different

If great abuſes then be permitted to exiſt, in ſpite of repeated applications to the legiſlature for a reform, let an appeal be made from the judgement of the legiſlature to the judgment of the people; and when the concurrence of the people is obtained, the application may be renewed with ſucceſs. In this, and in no other method, would I proceed, in the circumſtances of this country. It is a method which operates by ſlow and ſilent progreſſion, and accompliſhes the deſired end without civil confuſion or diſturbance. Nothing but the moſt deſperate exigency can juſtify a diſſolution of the govern-

different opinion. The King has the ſole appointment of his miniſters according to our government. But it is ſaid, did he not retain his poſt againſt a conſiderable majority of the Houſe of Commons? If this objection be good, it is becauſe a majority of that houſe may be ſuppoſed to repreſent the ſenſe of the people. But whilſt this majority thus acted, did not the people expreſs their approbation of Mr. Pitt in every poſſible way? The ſenſe of the people was therefore with him; and whoſe voice ſhall be preferred, the voice of the maſters, or of the ſervants; of the people whoſe authority is ſupreme, and whoſe benefit ſhould be the object of every law, or of the Senators, who are but deputies, and ought to be no more than the organs of the general will?

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ment, and a reſumption of the power into the hands of the people.

Entertaining theſe ſentiments, need I add, that my ſtrong hope is in the abilities of thoſe who have diſtinguiſhed themſelves by their writings in favour of civil and religious liberty? To ſuch let me ſay, by way of exhortation,—Purſue the courſe which you have ſo well begun, and may there never be wanting a ſucceſſion of men like yourſelves! Perſiſt in your endeavours to ſubdue that ignorance which, having been nurtured by the policy of courts, is now advanced to mature ſtrength. Although the monſter may for a while ſeem inſenſible to the ſtrokes with which he is aſſailed, yet deſpair not; the weapons which you wield are powerful; with perſeverance, your victory, though diſtant, is certain. The faireſt in the train of knowledge is LIBERTY: her bleſſings, though not to be enjoyed by you, will be procured by your labours. For you is reſerved the glory of reſcuing the human mind from a debaſing bondage. De-

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light yourſelves, ye generous ſouls, by anticipating the happineſs of future ages; let it be your ſupport and conſolation, under every difficulty and diſcouragement, that millions, yet unborn, who ſhall reap the fruits of your diſintereſted exertions, will applaud your virtue, and immortalize your names.



E R R A T A.

Page 44. l. 21. read the law.
50. l. 17. read *his* own.
57. l. 18. read beneficent.